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Aleksandar Fatić
*Srđan Korać*¹

The Albanian National Project Between Ethno-Politics and Europeanisation

ABSTRACT

The article discusses the re-emergence of ethno-politics as the determining factor for regional strategy in the Balkans, after the wars of disintegration of the former Yugoslavia 1991–1995, the subsequent NATO intervention over Kosovo in 1999, and the resulting declaration of independence of Kosovo and its gradual international consolidation. This has important strategic consequences for NATO and the EU in the region. While all Balkan countries have a future EU membership as their “number one” foreign policy priority, and all apart from Serbia have either joined, or are in the process of joining NATO, Kosovo’s independence and the related upsurge of ethnic unrest in Macedonia suggest that the very South-East of the region is drawn once again into an essentially ethno-nationalist strategy, which NATO and the EU will have little manoeuvring room to counter. The authors suggest that the way forward is to bravely meet Albanian ethnic demands half-way through territorial settlements by way of a new series of diplomatic conferences on the Balkans.

Key words: ethnic/civil nationalism, national emancipation, Macedonia, Kosovo, Serbia, Albania, NATO.

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The domain of ethno-political strategy in South-East Europe

Developments in the Balkan countries after the wars of disintegration of the former Yugoslavia 1991–1995 and the subsequent democratic transitions have included two at least seemingly contradictory tendencies. On the one hand, most countries (except Serbia) have either joined NATO or have signed the respective Membership Action Plans (MAPs). Slovenia was quickly admitted to the EU soon after declaring independence, Croatia is scheduled to formally become an EU member in 2013, while the accession negotiations with Montenegro started in June 2012. Parliamentary, judicial and executive government systems have been overhauled to varying extents in all countries of the region, generally with meagre success; however on a strictly rhetorical level, the shift from ethno-nationalism towards more citizen-based perceptions of collectivity has seemed dramatic. The move towards a “civil” rhetoric of nationality particularly in the multi-ethnic states of the Western Balkans (countries of the former Yugoslavia plus Albania), has helped lower the ethnic tensions in countries such as Croatia, Serbia and Bosnia-Herzegovina, and has been an expected consequence of the stated “number one” foreign policy priority of all the Western Balkans’ countries to become EU members.

At the same time, however, while ethno-nationalism appears to have disappeared from policy rhetoric, it has become even more deeply entrenched in the region’s factual geo-strategy. The clearest example of the strategic formulation and implementation of ethno-national programmes is that advanced by the ethnic Albanian political class. This is a carefully balanced strategy of the use of conflict (and threat of conflict), combined with bilateral diplomacy with key international players, and coordinated actions by minorities in a number of Balkan countries. The strategy has already facilitated the considerable consolidation of Kosovo as the second Albanian state in the Balkans (Kosovo is 95% ethnically “pure”) and is well on the way to allowing the ethnic Albanian leaders in Macedonia to assume an even greater control of the institutional levers of power in that country. With Albania a NATO member, Kosovo a *de facto* international protectorate and Macedonia a candidate for NATO membership, this places the Albanian ethnic strategy in a key context for determining the future role of NATO in the Balkans *vis-à-vis* ethnic politics. It is possible that, contrary to its role in Bosnia, NATO will be drawn into a *de facto* pro-ethno-nationalist policy in Macedonia, Kosovo, Albania and, to some extent, Serbia and Bulgaria.

Kosovo and Macedonia are especially important as “testing grounds” for Albanian ethno-political strategy, for at least two reasons. First, Kosovo is an essentially ethnic state-building project whose success serves as an important landmark for the further development of ethnic strategy in this part of Europe.

Secondly, Macedonia is “the next step”, a more complicated and politically more demanding case of gradual “state capture” by ethno-politics. Both experiments are methodologically exceptionally important: building a state out of a disarray in Kosovo, with mass violations of human rights and a lack of any clear policy vision to effectively include Kosovo in the Serbian institutional and economic system appears to be a unique project that requires not only very serious ethnic mobilisation “from the inside”, but also equally serious bilateral diplomatic successes, primarily reaching across the Atlantic. The ethnic Albanian leaders have succeeded in this project, despite an array of complicating circumstances, such as their presence on the US known terrorist groups list until 1998, when the “Kosovo Liberation Army” was removed from the list and granted increasing levels of political support.

Both Kosovo and Macedonia are key territories for the strategic enhancement of ethnic Albanian influence in the future regional integrations, as well as in multilateral and regional negotiations, in the case that Euro-Atlantic integration may be halted in the future.²

The interplay of political and cultural factors for ethnic conflict

All of the well-known risk factors for the use of conflict in furthering ethnic policies in troubled regions apply to the Western Balkans, and especially to the position of the Albanian people in the region. There are at least three such structural factors, including (a) weak institutions, (b) unresolved internal security concerns, and (c) critical ethnic geography. The Albanian people live across the Balkan Peninsula, however as a prime political and security subject they are the most active in Kosovo, Macedonia and to some extent in Montenegro, in addition to Albania itself. These four countries are usually pointed out as the kernel of a potential regional ethnic Albanian “superstate”, or, in a weaker form, and more recently, as a potential “Balkan Benelux”. In Kosovo and in Macedonia, state institutions are notoriously weak. There is a strong legacy of in-depth criminalisation of state structures, which is exacerbated by intransparent and uncontrolled funding

² The Euro-Atlantic integration of the region may be halted for a variety of reasons, including the ongoing global financial crisis, which reverberates negatively upon the remaining “enlargement enthusiasm” within the EU, or a potential internal institutional dissipation of the current EU through the possible financial failure of Italy, and later Spain and Portugal. The strategy chosen by the Albanian leaders is universal and essentially insensitive to the outcome of EU enlargement after Croatia’s entrance in 2013. The strategy is aimed to increase the influence of “the Albanian voice” in the region whatever its institutional shape might turn out to be in the context of EU and NATO enlargement. In this context, the strategy is methodologically superb and largely self-sufficient.

sources, especially for the new Kosovo institutions. These institutions, including the Parliament and Government, do not have a clearly structured budget, and the main method of filling what there is of a budget remains the charging of import duties at the border. Tax collection — the main source of funds for the budget in any orderly state — still does not fully function in Kosovo. This gives rise to questions about the origin of the funds that supported the nascent institutions in the initial post-independence years (Kosovo has been independent since February 2008).³

Issues of minority rights, the constitutional and factual emancipation of the minorities from the oppressive state practices that characterised former Communist rule in the region, remain acute in the entire Western Balkans. This is a security issue *par excellence*. Wars in the former Yugoslavia were motivated exactly by the “overheating” of these issues by the ethnic elites, and the consequences of this process and its destructive reach have since become more than evident.⁴ This is why “the Albanian Question” is now treated by Macedonian policy makers as the prime issue of national security and is the source of greatest tensions.

Finally, the ethnic geography of the Albanian people in the region is highly conducive to ethnic conflict. The Albanian population is highly concentrated along current state frontiers, and in most cases the neighbouring state is the mother state; for Kosovo Albanians, the neighbour/mother state was Albania itself, while for Albanians in Macedonia the relevant mother state is Kosovo. Most of the Macedonian Albanian political class was educated in Prishtina and sees Kosovo as the inspirational “mother-land”, rather than Albania itself.⁵ Along with the growing international consolidation of Kosovo the tendency of radicalisation of Albanian populations in the South of Serbia also rises; this particularly applies to the militant movement called “The Liberation Army of Preševo, Bujanovac and Medveđa”, which is active in the three southernmost Serbian municipalities, close to the border with Kosovo.

³ James B. Rule, *Theories of Civil violence*, University of California Press, Berkeley, 1988; I. William Zartman, “Introduction: Posing the Problem of State Collapse”, in: I. William Zartman (ed.) *Collapsed States: The Disintegration and Restoration of Legitimate Authority*, Lynne Rienner Publishers, Boulder, Colorado, 1995, pp. 1–11.

⁴ Michael E. Brown (ed.), *The International Dimensions of Internal Conflict*, MIT Press, Cambridge, Massachusetts, 1996.

⁵ Biljana Vankovska, “Between Preventive Diplomacy and Conflict Resolution: The Macedonian Perspective on the Kosovo Crisis”, International Studies Association 40th Annual Convention, Washington, D.C., 17–20 February 1999, <http://jurist.law.pitt.edu/biljana.htm>.

The structural risk factors for a radical ethnic strategy are compounded by the fact that Kosovo is in fact the second Albanian ethnic state in the Balkans, and potentially a second ethnic Albanian voting state in a future enlarged Europe. The current struggle by Albanian ethnic leaders to take control of the Macedonian political system could increase the number of states directly controlled by Albanian ethnic strategy to three.⁶ The strategy of rounding-up the Albanian-populated geo-strategic space on the peninsula is revealed in the proposal by Gunther Fehlinger, based in Priština, and Ekrem Krasniqi, based in Brussels, for the creation of a “Balkan Benelux” consisting of Albania, Kosovo, Macedonia and Montenegro. All four countries have very large Albanian populations, and only Montenegro has escaped ethnic unrest so far. The two authors were quick to point out at the outset that the proposal “does not suggest the creation of a Greater Albania”.⁷

In addition to the structural risk factors for ethnic conflict, at least four political factors are significant, namely: (a) the nature of the political system (how fair the system is to various ethnic communities), (b) the dominant national ideology, (c) the level of ambitions of the ethnic groups, and (d) whether or not the national elites are manipulative and prone to use conflict or threat of conflict to further their goals.⁸

From the point of view of inter-ethnic policy, the nature of political systems in the Balkans is complicated, partly because of a complex interplay of the three political risk factors for conflict enumerated above. The dominant national ideologies of individual ethnic communities differ, however they generally aspire to ethnic homogenisation and, contrary to the dominant state policy parlance about civil national identities and multiculturalism, they appeal to ethnic, rather than civil conceptualisations of political activism. The ethnic agendas are highly ambitious, and strongly leadership-driven, generally intolerant of disobedience and dissent. The ethnic Albanian political class in Kosovo and Macedonia is inclined to a militaristic model of pursuing ethnic policy. All these factors make up a potentially lethal cocktail of militarism and intolerance, along with a flammable, sweeping regional political brinkmanship. This is why governments of the region are reluctant to conduct comprehensive decentralisations of decision-making, including decisions with direct impact on

⁶ For a related discussion of principles behind ethnic homogenisation see Stephen Van Evera, “Hypotheses on Nationalism and War”, *International Security*, vol. 18, no. 4, Spring 1994, pp. 5–39.

⁷ Gunther Fehlinger and Ekrem Krasniqi, “Balkan ‘Benelux’ would speed up EU entry”, *EU Observer*, 19 June 2012, <http://euobserver.com/7/116669>.

⁸ For broader considerations see Arendt Lijphart, *Democracy in Plural Societies*, Yale University Press, New Haven, Connecticut, 1977.

minority rights. The highly accentuated risk factors for ethnic conflict cause a sort of knee-jerk reaction by the fragile systems to fend off processes that might make them additionally vulnerable. In countries with ethnic communities that are politically ambitious, led by strong and manipulative national elites and prone to conflict, it is difficult to open up the political system for a radical regionalisation and institutional decentralisation — something that ethnic communities in most Balkan countries seek. While the majority populations perceive such processes as threats to institutional stability, abortive decentralisations increase the sense of frustration in the minorities, thus also increasing their internal radicalisation and homogenisation — the familiar dynamics of a security dilemma.⁹

When the Albanian ethnic policy is concerned, a particularly potent fuelling factor for its aggressive pursuit is the dominant national ideology, which is couched in ethno-politics. This ideology is completely opposed to any civil nationalism that is favoured by most “plural” democratic societies. The difference is well described by Jack Snyder:

Civic nationalism normally appears in well institutionalized democracies. Ethnic nationalism, in contrast, appears spontaneously when an institutional vacuum occurs. By its nature, nationalism based on equal and universal citizenship rights within a territory depends on a supporting framework of laws to guarantee those rights, as well as effective institutions to allow citizens to give voice to their views. Ethnic nationalism, in contrast, depends not on institutions, but on culture. Therefore, ethnic nationalism is the default option: it predominates when institutions collapse, when existing institutions are not fulfilling people’s basic needs, and when satisfactory alternative structures are not readily available.¹⁰

Although there are serious reasons to question the plausibility of “civic nationalism” from the point of view of human rights, especially in its Republican version, which Snyder evokes (i.e. because citizenship as an administratively defined source of rights, can be a source of discrimination, and may militate against the observance of certain “natural” rights), Snyder points here to a key element for understanding the ideological efficacy of the national project in small communities. This element is culture.¹¹

⁹ Barry Buzan, “The Security Dilemma and Ethnic Conflict”, in: Michael Brown (ed.), *Ethnic Conflict and International Security*, Princeton University Press, Princeton, New Jersey, 1993, pp. 103–24.

¹⁰ Jack Snyder, “Nationalism and the Crisis of the Post-Soviet State”, in Michael E. Brown (ed.), *Ethnic Conflict and International Security*, Princeton University Press, Princeton, 1993, p. 86.

¹¹ For a critique of “civic nationalism” see Aleksandar Fatić, “Ethnicity as a power phenomenon: The Balkans at a crossroads of nationalisms”, *Sfera*, No. 2, October 2000, pp. 12–5.

The political culture of most Balkan nations is highly hierarchical, leadership-oriented, and intolerant of internal dissent. Consequently, in times of crisis, Balkan political movements favour strong personalities and radical political agendas. The Albanian political parties are especially hierarchic: they flourish on a mixture of traditional patriarchy and a revolutionary mentality of national emancipation that sees it as a duty of all Albanians to be good soldiers for the national cause. Albanian ethnic elites, especially those in Kosovo, do not shy away from violence to secure obedience within the national ranks: this has been manifested in the “disappearances” of potential ICTY witnesses against the former paramilitary commander Ramush Haradinaj, who was eventually acquitted of all charges by ICTY in 2012.¹² The current Prime Minister of Kosovo, Hashim Thaçi, in many ways personifies both the national struggle and the perception of an unquestioned duty of all Albanians to stand by all the main political protagonists of the 1999 war with Serbia.¹³ Thaçi was the subject of investigation, in 2012, for the trade in organs harvested from Serbian victims of the 1999 conflict, which had been triggered by reports to the Council of Europe.¹⁴

Militant political cultures additionally catalyse threatening mutual perceptions between nations potentially in conflict in the Balkans. The Albanian political class has used a particular political history narrative as a pre-text for the generation of negative perceptions of other nations in all states populated by the ethnic Albanians in the Balkans. The narrative is that the Albanians derive from an indigenous Balkan tribe, Illyrians, who have allegedly been systematically marginalised by the “immigrants” to the region. These “immigrants” then created their own nation states, quietly imposing severe structural violence on the Albanians, who were thus turned into minorities, although they are numerically the strongest ethnic group in the

¹² Marlise Simons, “Former Kosovo Leader to Be Retried”, *The New York Times* (the New York edition), 22 July 2010, p. A12; Mark Tran, “War crimes court orders retrial of Kosovo leaders”, *The Guardian*, online edition, 21 July 2010, www.guardian.co.uk/world/2010/jul/21/hague-orders-ramush-haradinaj-retrial; Aaron Gray-Block, “Kosovo ex-PM back in court for war crimes retrial”, *Reuters*, online edition, 18 August 2011, www.reuters.com/article/2011/08/18/us-warcimes-haradinajidUSTRE77H56X20110818.

¹³ “Profile: Hashim Thaci”, *BBC News*, online edition, 9 January 2008, <http://news.bbc.co.uk/2/hi/europe/7133515.stm>.

¹⁴ Ian Traynor, “Former war crimes prosecutor alleges Kosovan army harvested organs from Serb prisoners”, *The Guardian*, online edition, 12 April 2008, www.guardian.co.uk/world/2008/apr/12/warcimes.kosovo; Dick Marty, “Inhuman treatment of people and illicit trafficking in human organs in Kosovo”, 12 December 2010, Committee on Legal Affairs and Human Rights, Parliamentary Assembly of the Council of Europe, http://assembly.coe.int/CommitteeDocs/2010/20101218_ajdoc462010provamended.pdf; “Kosovo organ trafficking: Williamson to head EU probe”, *BBC News*, 29 August 2011, www.bbc.co.uk/news/world-europe-14706242.

region. The narrative has helped launch a movement for national emancipation and far-reaching promises of a political regeneration of Albanian political influence. The Kosovo political elite does not hide its ambition to be the leader of this emancipation drive for all ethnic Albanian communities in the Balkans.

Although political discourse has often referred to a potential Albanian political “regeneration” through the creation of a “Greater Albania”, which in addition to Albania and Kosovo would include the whole of Macedonia with parts of Greece and Montenegro, the idea of a Greater Albania would be a very far-fetched political prospect for the Albanian political elites. The reasons are many, but the most important one lies in the very different views by Kosovo politicians and those from Albania on who should lead the movement, and disagreements with regard to the acceptable methods to be used to this end. Most politicians in Albania consider the more radical Kosovo politicians to be reckless risk-takers with unpredictable political demeanour, and like to maintain a healthy distance with them when the Albanian ethnic “mission” in the region is concerned, while formally supporting their struggle to consolidate Kosovo’s independence. Such policy goes hand-in-hand with the positions by Washington and the EU, who rule out any further adjustment of frontiers in the Balkans after Kosovo independence.

The crucial point often missed in discussions of the prospect of a Greater Albania is that such a state-building project is by no means necessary, and possibly not even desirable, for the realisation of the promised “political renaissance” of the Albanian people: such a renaissance is perfectly possible if there are two, three, or even four ethnic Albanian states in the Western Balkans, including, in addition to Albania and Kosovo, the whole or part of Macedonia, and possibly a part of Montenegro — the proposed “Balkan Benelux”. Such a cluster of states (or statelets) would secure the ethnic Albanian elites’ domination over the Western Balkans in the territorial and geostrategic realms, while at the same time allowing the maintenance of good relations with both Brussels and Washington, and a continuation on the road to EU membership by all states. Although with the global economic crisis the concrete perspective of such membership has become quite distant for the remaining countries of the Process of Stabilisation and Association (the “Eastern neighbourhood” of the European Union), the integration process makes sense for the Albanian politicians. Should it be fruitful, the Albanian ethnic states would have not one, but three votes within the EU, which would allow them a disproportionate influence on matters relevant to the entire Balkan region. At the same time, within the Western Balkans, the Albanian politicians would become the decisive factor in the solving of all regional matters, and the focus of regional decision-making would consequently shift

further to the South-East of the region.¹⁵ A map with the current two ethnic Albanian states (Albania and Kosovo) shaded in dark, with two additional volatile Albanian minorities in Macedonia and Montenegro (Greece is omitted as ethnic relations there are slightly different) is given below. It shows the focus of ethnic politics that has shifted to the very South-East of the region, away from Croatia, Serbia, and even Bosnia-Herzegovina.



Albanian people in the Balkans typically do not perceive themselves as national minorities in states other than Albania and Kosovo. Part of the reason for

¹⁵ For a broader consideration see John A. Vasquez, “Factors Related to the Contagion and Diffusion of International Violence”, in: Manus I. Midlarsky (ed.), *The Internationalization of Communal Strife*, Routledge, London, 1992, pp. 149–72.

this is in the relatively high numbers of the Albanian populations in these other states. However, the main reason is in the ideological and strategic matrix of the Albanian political class, which takes a strategically aggressive approach and conceptualises “the Albanian Question” as a regional Balkan issue whose solution is yet to commence through a sort of political unification of Albanians living in the various Balkan states. The first step towards such a unification would be taking control over the political systems of the region as a dominant, rather than a minority nation. This explains why the solving of the conflicts associated with “the Albanian Question” based on the agendas of guaranteed minority rights, which has been suggested many times, has proven unsuccessful.¹⁶

The “collectivisation” of perceptions of the significant others through conflict lenses, in light of an ambitious national strategy, is sometimes described as a “pathology of ethnicity” that characterises most ethnic conflicts; it is particularly pronounced in chronic conflicts characterised by a difficult progress towards a highly ambitious ethnic goal.¹⁷ This is why conflicts waged by Albanians in the Balkans have been permeated with highly emotional and value-laden perceptions of self and the other, and characterised by a strict discipline and a hierarchic structure of decision-making, starting with political agenda-setting, and progressing all the way to the execution of specific conflict actions. However, the conflicts are highly rational on a strategic level. They are by no means “tribal wars”, which is the simplistic way in which many western politicians and researchers have perceived Balkan conflicts.¹⁸ The perception was poignantly captured by the American Admiral James W. Nance who remarked: “Let them fight it out. They have been at it for a thousand years”.¹⁹

Albanian communities in the various parts of the Balkans have proven an ability to initiate a political and armed conflict in a highly controlled way, synchronised with the movements of the other Albanian communities in other parts of the region. They were also able to cease hostilities very quickly whenever continuing the fighting would jeopardise ongoing negotiations or any other part of the coordinated ethnic strategy. While Kosovo was awaiting first recognitions, the Albanian communities in Macedonia and the South of Serbia have completely ceased their attacks on the police and security forces of the two states. In other moments, when things needed to be “moved forward”, conflicts were

¹⁶ Jonathan Eyal, “Eastern Europe: What About the Minorities?“, *World Today*, vol. 45, no. 12, December 1989, pp. 205–8.

¹⁷ Alexander J. Groth, “Pathological Dimensions of Domestic and International Ethnicity”, *Political Science Quarterly*, vol. 110, no. 1, Spring 1995, pp. 69–82.

¹⁸ Thomas L. Friedman, “Lift, Lift, Contain”, *New York Times*, 4 June 1995, p. E15.

¹⁹ Tom Ashbrook, “US Weighs Solo Role, Multilateral Efforts”, *Boston Globe*, 3 May 1995, p. 1.

escalated in a coordinated manner. This makes it very clear that the Albanian ethnic strategy in the Balkans is by no means an irrational “thousand years old fight” arising from ancient hatreds, but a very precise and highly rational ethno-political strategy. With the relevant cultural and strategic elements in mind, it is clear that, although minority rights and the relevant institutions need to be strengthened (as this is part of the general democratisation of the region), the solution of “the Albanian Question” is possible only through proper political negotiations aiming at a compromise.

The economic context for conflict

Economic factors of ethnic conflict form a separate set of catalysts for the hostilities. They are typically divided into three groups: (a) problems of economic development, (b) discriminatory economic systems, and (c) challenges of economic transitions. The situation of the Albanian people in the Balkans is highly conducive to ethnic conflict in light of all three types of economic factors. All of the territories where Albanians live today are relatively poor (Greece, which until recently was an exception, is today in an exceptionally bad economic shape, with the unemployment rate of 21.9%).²⁰ All of the states populated by ethnic Albanians, except Greece, are new democracies, suffering from various degrees of transition trauma and undergoing a dramatic social restratification of the citizenry. In most of these states, economic liberalisation has gone hand-in-hand with controversial privatisations of state property and the resulting progressive concentration of ownership of resources in the hands of a few “tycoons”. In all of the Balkan countries poverty is a key issue for public policy, and in some it has been declared a threat to national security.²¹

Unemployment has been one of the most worrying consequences of the current global economic crisis, because it stifles strategies to attack the crisis by economic activity, which includes a maintenance of optimum levels of spending. In Spain, the fourth largest economy of the Eurozone, the current unemployment rate is 20%, and this is considered dramatic. On the other hand, in the Balkans, across the territories populated by the Albanian people, the unemployment rate over the years has hovered around 40–50%. In 2010, the official unemployment rate in Kosovo was 44%, and according to the Minister for Labour and Social Affairs, Nenad Rašić, the government saw no realistic options to approach the

²⁰ Louisa Peacock, “Greek unemployment hits record while French jobless rate reaches 10pc”, *The Telegraph*, 7 June 2012, <http://www.telegraph.co.uk/finance/jobs/9316410/Greek-unemployment-hits-record-while-French-jobless-rate-reaches-10pc.html>.

²¹ Anti-poverty strategies have been declared instruments of national security in Serbia and Macedonia. See www.b92.net/info/izbori2012/vesti.php?yyyy=2012&mm=05&dd=27&nav_id=613228.

problem.²² Unemployment in Macedonia is officially at 31.8%,²³ in Albania it is between 35 and 40%, and in Serbia around 20%.²⁴ In most states of the Western Balkans the poverty rate is at or above 25%, which brings them on a par with Turkey.²⁵

When these figures are viewed in light of the enormous economic differences between members of the political class on the one hand, and the ordinary people on the other, the propensity by the Albanian ethnic elite to divert public attention towards patriotic sentiments, focused on the aim to consolidate the Kosovo independence and further the Albanian ethnic policy agenda across the region, emerges as instrumentally rational. In all of the Western Balkan states the Albanian population shares the difficult economic destiny of the majority populations. Bearing in mind the synergy of factors that trigger political and ethnic violence, all of which apply to the Albanian ethnic communities, the propensity by the Albanian ethnic elites to use conflict for the furtherance of their regional ethnic strategy is not surprising.

Ethnic Albanian-Macedonian crisis 2012

The April 2012 killing of five ethnic Macedonians near the Macedonian capital Skopje, dramatically raised the tensions between the ethnic Albanians and the majority Macedonians in this troubled country that has been a candidate for EU membership for nine years. The spree of violence, including street killings during 2011 and 2012, has marked the most critical point in Albanian-Macedonian ethnic relations since the war of rebellion the Albanians had waged on the Macedonian security forces in 2001.²⁶ The rationale for the 1991 conflict from the Albanian side was firmly imbedded in the historical narrative described earlier: the main goal was to declare Albanians the second “constitutive nation” of Macedonia, in addition to Macedonians (a status starkly different from that of a national minority). The main argument for this claim was that according to the

²² *Blic* daily, 10 August 2010, www.blic.rs/Vesti/Drustvo/202157/Rasic-Problem-nezaposlenosti-na-Kosovu-tesko-resiv.

²³ *Al Jazeera Balkans*, 15 May 2012, <http://balkans.aljazeera.net/makale/bih-sve-blize-makedoniji-po-nezaposlenosti>.

²⁴ “Unemployment rate increases to 23.7%”, *B92*, 16 January 2012, http://www.b92.net/eng/news/politics-article.php?yyyy=2012&mm=01&dd=16&nav_id=78314.

²⁵ *Euractiv*, 5 June 2012, www.euractiv.rs/srbija-i-eu/4190-smanjnje-nezaposlenosti-i-duga-prioritet-za-srbiju.html.

²⁶ Jeremy Druker, Joshua Boissevain, Ioana Caloianu, and Anna Shamanska, “Killings Raise Tensions in Macedonia”, *Transitions Online*, 16 April 2012, www.tol.org/client/article/23099-killings-raise-tensions-in-macedonia-corruption-sentences-in-the-czech-republic-.html.

2002 census ethnic Albanians made up 25.2% of the country's population, as opposed to 64.2% ethnic Macedonians.²⁷

Albanian demands for the political and administrative division of Macedonia date back to the initial ethnic Albanian insurgency in Kosovo, in the early 1980s. In the 1990s, during the bloody disintegration of the former Yugoslavia, these demands included the granting of the status of a constitutive nation rather than a national minority to ethnic Albanians in the newly independent Macedonia. As the demand was not met by the Macedonian government, the Albanians protested by boycotting the 1991 census and the referendum on Macedonia's independence that was held the same year. In 1992, the Macedonian Albanians held their own referendum and declared a "Republic of Illirida" in Western Macedonia. Soon afterwards that part of Macedonia was flooded by Albanian state symbols, including Albanian flags being placed on municipal office buildings. The movement for a "Republic of Illirida" culminated in 1995, with the establishment of an ethnic Albanian university in the town of Tetovo, which was outside the Macedonian state university system and posed all kinds of questions of legality and recognition of diplomas.

In the immediate aftermath of the Kosovo war in 1999 and the entrance by NATO troops into Kosovo, a part of the Kosovo Liberation Army (KLA) moved to Macedonia and continued ethnic warfare under the name of the Liberation People's Army, claiming that they are fighting for the "unification of ethnic Albanian territories".²⁸ This led to an upsurge of conflict with the police and the Macedonian Army throughout 2000 and the first half of 2001, followed by civil unrest on the streets of the capital Skopje. With USA and EU mediation, the insurgents and the government signed the Ohrid Peace Agreement, in August 2001. The Agreement led to the cessation of hostilities followed by changes to the Macedonian Constitution, in November 2001, which gave the Albanian population the status of a second constitutive nation, reformed the local government accordingly, and created a model for the proportional representation of ethnic Albanians in central government.

At the 2002 parliamentary election, the radical Albanian Democratic Union for Reintegration received 70% of the ethnic Albanian vote — twice as many as the moderate Albanian Democratic Party. The Democratic Union for Reintegration was the political wing of the militant Liberation People's Army

²⁷ Joanne van Selm, "Macedonia: At a Quiet Crossroads", Migration Policy Institute, June 2007, www.migrationinformation.org/Profiles/display.cfm?ID=608.

²⁸ Nicholas Whyte, Nadia Alexandrova Arbatova, and Dana H. Allin, "The Macedonian Crisis and Balkan Security", *European Security Forum Working Paper*, No. 2, July 2001, www.ciaonet.org/wps/whn01/whn01.pdf, pp. 13–8.

(closely affiliated with the KLA, later to be renamed as the Albanian National Army) and was pushing for a federalisation of Macedonia. Already early in 2003, members of the Albanian National Army appeared in the media with a declaration that they no longer recognized the Ohrid Agreement and were set to continue a “liberation struggle”.

As a post-conflict society, Macedonia is a relatively unsuccessful example of democratisation as a strategy for maintaining the peace, because Macedonians and Albanians do not live as two parts of the same political community. Rather they are two worlds living apart.²⁹ This situation is further aggravated by the isolationism of the Albanian ethnic culture: 96% of Albanian men and women seek a spouse exclusively within their own ethnic community. This is made possible not only by the traditionalist, strongly patriarchal culture of the Albanian people, but also by the factual everyday divisions between Albanians and Macedonians: they each have their own cafés and pubs and almost never spend time together. Schools in Macedonia are organised on an ethnic principle. This means that Albanian and Macedonian children rarely meet and do not socialise together, with those encounters that do happen tending to end in fist fights. This leads to reasonable doubts about the feasibility of any future life together, within the same political system.³⁰ In Macedonian schools, even teachers have separate meeting rooms on an ethnic basis: one for the Albanians, and one for Macedonian teachers. In fact the institutional and practical arrangements of Albanian-Macedonian “life together” in the modern Macedonia can be described as a self-imposed ethnic apartheid.

The most recent Albanian political demand in Macedonia concerns the name of the Macedonian state. Initially the Albanian ethnic leaders did not pay much attention to “the name issue” in the context of the conflict between Skopje and Athens over the name “Macedonia”. Albanian politicians were of the view that Skopje’s insistence of the name “Macedonia” should not go as far as to jeopardise Macedonia’s integration into NATO.³¹ However, in 2011 and 2012 the Albanian political parties in Macedonia actively joined the debate over the state’s name with the demand that the future “final” name must reflect not just the Macedonian, but also the Albanian identity of the country.³² This demand, which

²⁹ Thorsten Gromes, “Between Impositions and Promises: Democracy in Macedonia”, *PRIF Report*, No. 91, Peace Research Institute Frankfurt, Frankfurt am Main, 2009, pp. 25–7.

³⁰ See more Ljubica Grozdanovska, “Class Struggle”, *Transitions Online*, 1 October 2007, www.tol.org/client/article/19030-class-struggle.html.

³¹ Zhidas Daskalovski, “Macedonia”, in: *Nations in Transit 2009*, Freedom House, New York, 2008, pp. 353–4.

³² Mikhail Yambaev, “Will Macedonia become the third Albanian state in the Balkans?”, Strategic Cultural Foundation, 11 March 2011, www.strategic-culture.org/news/2011/03/11/will-macedonia-become-the-third-albanian-state.html.

has been voiced at the same time when five Macedonians angling at a lake were randomly murdered “execution style” by, as the police investigation has since shown, a group of Albanian extremists, might spur the fury of the majority population and lead to new tensions. In turn, such an angry reaction by the Macedonian public could be used by the ethnic Albanian leaders as an argument for the claim that Albanians in Macedonia can no longer realise their collective political rights without further constitutional concessions being made by the majority. This process would escalate tensions in yet another security dilemma in this state captured by ethno-political conflict.

Solving “the Albanian Question” in the Balkans

Most Balkan states that have either been directly affected by, or have indirectly felt the impact of, the Kosovo war in 1999, including Serbia and Macedonia, have debated many times the issue of whether or not to negotiate with ethnic Albanian leaders when they use conflict as a dominant means of furthering their national agendas in the respective countries. For the Balkan countries, this question has had a very similar meaning to that of whether to negotiate with terrorists in the western political discourse. Just like the “no negotiations with terrorists” policy that was formally adopted by most western democracies after 9/11, attempts not to negotiate with militant Albanians in the Balkans have proven unsuccessful.³³ Ted Honderich has explained the reasons for the failure of “no negotiations with terrorists” policy by pointing to the fact that at the base of most appalling terrorist attacks often lie collective interests which, in and of themselves are *legitimate*. According to Honderich, often the political articulation of such legitimate, and sufficiently pressing interests is blocked, either by a global marginalisation of the relevant population (the case in the Middle East), or by a practical unlikelihood that, although formally articulated, they would be effectively addressed. In such situations resorting to conflict by those marginalised has been the rule. With conflicts of the described type experience has shown that negotiations have tended to yield far better results than the “no negotiations policy”. In Northern Ireland negotiations with the IRA, culminating in the Good Friday Agreement of 10 April 1998, have stopped the bloodshed that at times had escalated to urban warfare. The negotiations have achieved what no amount of repression could. Even the British military occupation of Northern Ireland, with all the commitment of resources, had not been able to bring even

³³ On the lack of success of “no negotiations with terrorists” from a principled and theoretical point of view, see Ted Honderich, *After the Terror*, Expanded and Revised Edition, Edinburgh University Press, Edinburgh, 2003.

a temporary halt to the conflict. To say that negotiations had no real alternative in the Northern Ireland is not, of course, to suggest that IRA terror was legitimate as a means, or that those responsible for terror acts should be relieved of moral or criminal responsibility. However, the underlying political interests behind the terror campaign were obviously legitimate, and the many years of violence have been perhaps the clearest example in Europe after World War Two of how ethnic (and/or religious) insurgency cannot be put out without the prime role being accorded to diplomacy and negotiations.

After the publication of Honderich's book (along with an avalanche of publications with similar arguments that followed it), and their own experience in Afghanistan and Iraq, the US government have, practically, abolished the "no negotiations with terrorists" policy, although they have not retracted the principle formally. Today negotiations are underway with the Taliban in Pakistan about the conditions for the ceasure of violence and an optimum of Islamist demands that could reasonably be met. These concern both the region's strategic situation (Taliban demands for the withdrawal of US troops) and the social order to be imposed in some of the Gulf States and parts of Pakistan itself (mainly revolving around the imposition of Islamic law).

Although ethnic Albanian leaders have been at the forefront of much ethnic insurgency in the second half of the 20th and early 21th century in the Balkans, and some of their methods were at times formally classified as terrorist, negotiations with them have never practically stopped. Part of the reason for this is that after 9/11 terrorism has tended to be perceptually connected with radical Islam, while the Albanian people had never brandished religious radicalism. However, in the Western Balkans negotiations with Albanians have not always been conducted sincerely and appreciatively of their legitimate interests and strategic ambitions that lie behind political violence committed on their behalf.

The most obvious such case have been negotiations between the Serbian Government and Kosovo Albanian leaders, in 2006 and 2007, under the mediation of former Finnish President Marti Ahtisaari. These negotiations immediately preceded Kosovo's declaration of independence in 2008, and were essentially characterised by a refusal of the Serbian side to either take full account of the Albanian ethnic project and strategy in the Western Balkans, or to fully appreciate the likelihood that this strategy might succeed through international support and cohesive local ethnic mobilisation. Instead of addressing these "real" issues, the Serbian negotiators myopically focused on a "legalism" that was in fact a mere positivistic normativism. The Serbian negotiation team's approach was completely unresponsive to pragmatic concerns. Serb negotiators did not talk to Albanian intellectuals, and they deliberately refused to even inform their strategy by the demographics at the

time. Instead, Belgrade's negotiators stressed multilateral diplomacy, focusing on the UN, while almost completely neglecting bilateral lobbying and, more importantly, substantive discussions with Albanian leaders. Today it is clear that the Serbian strategy was fundamentally mistaken and ultimately counterproductive.

The result of Serbia's negotiation strategy in the aftermath of massive police violence against ethnic Albanians in Kosovo under Slobodan Milošević, in the 1980s and 1990s, was loss of territory and a fast consolidation of Kosovo's independence through quick bilateral recognitions that followed already in 2008 and 2009. In a way, this illustrates the odds of engaging in a "zero-sum game" conflict with the Albanian ethnic strategy in the region.

Macedonian government's strategy is different: it appears to vacillate between waging war (as in 2001) and granting major concessions through dramatic constitutional changes. Nevertheless, Macedonia continues to exist on a proverbial sword's edge of open ethnic conflict.

Neither of the two strategies have been effective because they have failed to address what really lies behind the ethnic Albanian project in the Balkans, and that is a consolidation of political influence in all four states depicted in the map presented in this paper, while moving towards a further EU integration and a NATO membership for Kosovo. With Albania already a member of NATO and with Macedonia well underway to membership, with Serbia the only state that under a strong Russian influence as the non-NATO island in the region, such ethnic strategy must be addressed by the governments of Macedonia (and potentially of Montenegro) in a structurally different way than has been the case so far. It is likely that such a novel approach would need to go along with the *structure* of the ethnic Albanian project in the Western Balkans: it would involve not only constitutional, but also territorial concessions within broader institutional contexts, such as regional conferences resulting in territorial swaps that are guaranteed by the major powers. While a future Macedonian (and possibly Montenegrin) Dayton-like agreement with ethnic Albanian leaders may be a nightmare scenario for Macedonian and Montenegrin politicians, it is likely the only way to prevent the reoccurrence of Kosovo and the 1999 Albanian-Serbian war elsewhere in the Balkans.

The "Albanian Question" is not a matter of ethnic hatred dating back to time immemorial; it is a potent, coherent and well developed ethno-political project that dominates the entire security perspective in the Western Balkans. The only way to address conflicts that this project inevitably engenders is to draw internationally certified agreements on territorial settlements, and this involves new border adjustments in the Western Balkans.

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International Security and the Iranian Nuclear Program

ABSTRACT

Iran's ongoing nuclear development program continues to represent a source of tensions with the international community, despite public pledges that the program is peaceful and would never be used for military purposes. While the media attention focuses on the possible conventional intervention, the Western response, when it comes, might take on the form of special war or subversion within Iran. Yet any form of intervention could have far-reaching consequences, for both the region and the world.

Key words: Iran, international security, nuclear program, conflict, special war.

Introduction

Thirty-three years after the 1979 revolution, Iran remains a hotspot on the world stage, and is even looking like a serious candidate for a global role in the new, multipolar world order. It was Iran that presented the principal obstacle to liberal democratic ambitions after 1989, having developed a specific ideology and political system founded on theocracy, in which the leader of the Islamic Republic occupies a similar position to that of the Ottoman sultans.²

It may have suited the interests of the West at the end of the Cold War to have Iran as the hostile Other, but Iran refused to accept such a limited role. Instead, it became a key promoter of conservative Islam. During the 1990s, it

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² Said Amir Arjomand, *After Khomeini: Iran Under His Successors: Iran Under His Successors*, Oxford University Press, New York, 2009. p. 41.

entered Europe through Bosnia-Herzegovina, enabled by the regime of Alija Izetbegović, and soon thereafter into Croatia. There are even social scientists in Croatia advocating the theory that Croats are of Iranian origin, or indeed one of the Iranian tribes.³

America's failed war in Iraq (2003-present) presented opportunities for Iran to have a direct presence in Shi'ite-majority parts of that country, (e.g. Basra) and forge new ties to Russia, China, Venezuela and "Old Europe" countries such as Germany and France. In the Middle East, Iran is a regional superpower. It is also the focus of anti-American interests in the Persian Gulf, with considerable Russian and Chinese influences. Unlike Eastern Europe, Iran did not have to liberalize at the end of the Cold War.

The current confrontation between Iran and the U.S. is framed by Iran's nuclear ambitions on one side, and the United States' intent to prevent them with all available means on the other. The causes of the conflict, however, are wider in scope, and touch upon American interests in the Arab world in general, as well as NATO-assisted "regime change" and overthrow of secular governments in North Africa. A nuclear-armed Iran would directly lead to a nuclear Middle East, as Saudi Arabia would immediately embark on a nuclear program in response. It is the dynamic between the Shia Iran and the Sunni Saudi Arabia that dominates the Middle East. Israel, while widely assumed to possess nuclear weapons, is mostly regarded as an outpost of the United States.

Sunni states such as Saudi Arabia, Qatar and Turkey are extensively involved in seeking the overthrow of the Alawite regime in Syria, which is backed by Iran. Previously, the Saudis and the Qataris also played a significant role in overthrowing the anti-Saudi secular government of Libya (Col. Qadhafi), which was then replaced by a pro-Saudi, salafi and jihadist leadership.⁴

The Iranian Revolution

The Islamic Republic of Iran recently marked the 33rd anniversary of the revolution that brought it into being in February 1979, under the leadership of Ayatollah Ruhollah Khomeini. For the better part of those three decades, Iran has staid in the spotlight of international politics. In November 1979, Iranian revolutionaries seized the U.S. Embassy in Tehran, which they held for 444 days, until January 1981.⁵ The embassy takeover and the failure of the

³ See: Mijo N. Ćurić: *Staroiransko podrijetlo Hrvata*, Zagreb 1991, or Mirko Vidović: *Hrvatski iranski korijeni*, Grgur Ninski, Zagreb 1991.

⁴ Gregory R. Copley, *Israel and Iran: Still No War in Sight, But the Mosaic of Great Eurasian and Mediterranean Strategic Change Becomes More Clear*, Defense & Foreign Affairs Special Analysis, ISSA, Alexandria, US, April 5, 2012.

hostage rescue mission (April 24, 1980) significantly influenced the U.S. presidential election in November 1980. Thus began the eight-year term of Ronald Reagan, coinciding with the Margaret Thatcher premiership in the UK, leading to the eventual end of the Cold War.

The Iranian revolution also marked the rise of *political Islam*, which went on to become a serious threat to liberal democracy not only in the U.S., but elsewhere in the West, especially in the late 1990s and culminating with September 2001. Political Islam had some successes before the Iranian revolution, but only afterwards did it become a regional and potentially a global force. The Iranian revolution was followed by the Afghan crisis and the Soviet intervention in Afghanistan in 1979. As current analysis indicts, that intervention significantly depleted the military capacities as well as the international credibility of the USSR, contributing to its eventual collapse. Afghanistan was the Soviet Union's last war.⁶

Embarking on the policy of “exporting revolution,” Iran actively aided the formation of radical organizations that embraced violence, such as Hamas and Hizbullah. The Iranian revolution thus heralded the possibility of a later wave of *Islamic* revolutions, and certainly acted as a bulwark against the embrace of liberal democracy in Muslim nations. This has fundamentally defined the character of the conflict (political and sometimes military) between liberal democracy — which after 1989 attempted to expand globally — and the traditionalist theocracy resisting that expansion, seeking to maintain supremacy in national or regional terms. Rather than a “clash of civilizations”, or a struggle over energy, power and national interests (as the RealPolitik school of international relations tends to see it), this may well be the central episode in the broader ideological and political clash between liberal democracy's universalist ambitions and the significant local resistance mounted by traditionalist forces. In that sense, one could legitimately ask whether the 1979 Iranian revolution could represent for the Muslim world what 1789 in France represented for the West, and 1917 for what became the Communist bloc. And does the Iranian revolution have the potential to organize, incite and direct the ambitions of political Islam in the world today?

⁵ David Farber, *Taken Hostage: The Iran Hostage Crisis and America's First Encounter with Radical Islam (Politics and Society in Twentieth Century America)*, Princeton University Press, Princeton, US, 2004, pp. 73-191.

⁶ See: Galeotti Mark, *Afghanistan: the Soviet Union's last war*, Frank Cass, London, 1995.

Iran's Policy

Iranian policy is to a great extent defined by the country's relations with the United States, which have been conflicted for over three decades now. Today, Iran is the greatest challenge of U.S. foreign policy.⁷

Secondly, in analyzing Iran one needs to bear in mind that it has an alternate political system, based on dualism and a combination of republican and theocratic political models, within which limited democracy is both practiced and tolerated. Democracy is not entirely excluded from the system, but it is subordinated to the theocratic component. In that regard, Iran has established itself as an ideological and institutional alternative to liberal democracy.

Furthermore, Iran has imposed itself as an Islamic standard of a moderate power that has influence in other Muslim countries, and can be a stabilizer or a destabilizer at will. This can be seen in Iraq, which has a numerous Shia population, and where Iran is acting moderately and in increments, knowing the obligations of this community and the authorities towards the U.S. presence and interests. Iran also maintains influence with Hamas and Hizbullah, through which it can influence not just the Middle East, but potentially all Muslim countries, even those with Sunni majority. Hence it is important to understand the direction of Iran's policies.

Iran is often a "hard power" and an aggressive player on the international stage, in particular due to its potential for regional projection of military power and for developing nuclear weapons. The implications of this go beyond regional stability; a potential conflict between Iran and Israel, for example, could have major negative consequences in global terms.

Through joining "alternate networks" of influence, such as BRIC (Brazil, Russia, India, China) and the Shanghai Cooperation Organization, Iran aims to become a respectable power in global terms, especially within the context of the developing multipolar world.

This is the wider context within which modern Iranian policy needs to be considered. Purely viewing it from the local, inter-Iranian perspective is not sufficient, because Iran today is one of the principal security threats to both the region and Western civilization, as well as the key actor in the global resistance to the spread of liberal democracy, especially in areas dominated by Islam.

Iran has been the biggest obstacle to the doctrine and practice of liberal interventionism, and the ambitions to use the end of the Cold War and the recent

⁷ See: Ilan Berman, *Tehran Rising: Iran's Challenge to the United States*, Rowman & Littlefield, Meryland, US, 2005.

“Arab spring” victories to establish the absolute and irreversible global hegemony of liberal democracy. Ideologically, Iran today plays the same role the Soviet Union had in the Cold War, establishing itself as the principal ideological counterpoint to liberal democracy’s global ambitions, especially since 2001.

At the same time, Iran came to occupy the place of the necessary evil in international relations, the Other in relation to which liberal democracy defines itself. Following the Cold War and the disappearance of Communism, the West lost a known and visible enemy. Terrorism and the clear global threat of Islamic fundamentalism filled that void. Iran and the West needed each other, in a way, because they made ideal enemies, justifying their existence by the threat of the other.

While tensions between the West and Iran have risen, both parties have felt an increasing need to justify their existence and actions through the escalation of conflict with the other. In the United States, the Iranian nuclear program and power aspirations strengthened the forces of interventionist neo-conservatism. Direct interventions in Afghanistan, Iraq, Pakistan (i.e. the Bin Laden raid), Libya and Bahrain generated a pressure wave that led to the overthrow of governments in Tunisia, Egypt and Yemen. Yet the growing influence of America’s regional allies — Saudi Arabia, Qatar and the UAE — has strengthened the conservative forces within Iran.

The West and Iran have needed each other, in order to consolidate their own political systems and identities after the chaos and wars within the Arab world, and the instability such wars have produced on three continents.

From that perspective, then, it becomes easier to understand why there has been no rapprochement over the past three decades between the West and Iran. Namely, reconciliation has been neither side’s interest, since both have used the Other to bolster their own social, political, legal and economic structures. The United States needed Iran to convincingly demonstrate that the new world order still faced genuine threats and dangers. Meanwhile, the shapers of Iran’s Islamic revolutionary identity benefited from a Western threat in the project of homogenizing the country and strengthening its ideological, military and political cohesion.

Indications of Iran’s ambitions to extend its power beyond the region are its repeated requests to join the Shanghai Cooperation Organization,⁸ and its nuclear program, though it remains unclear whether its primary purpose is energy or military. At the same time, Iran is developing direct cooperation with BRIC nations — Brazil, Russia, India and China — which don’t bother

⁸ “Iranian leader: wipe out Israel”, CNN, 10. 27. 2005, <http://www.cnn.com/2005/ WORLD/meast/10/26/ahmadinejad/index.html>.

hiding their displeasure with the role and policies of the United States, and offer a potential new world order.⁹

Cooperation between Russia and Iran involves assistance with nuclear energy projects, and American policymakers are particularly perturbed by the possibilities of aspects of that cooperation that may not be publicly known. In addition to political and military aspects, the Russo-Iranian cooperation has its energy and economic sides, in particular regarding the possible alternate routes of energy transportation in the region. The north-south “axis” Moscow-Erivan-Tehran, if established, could rival the West’s Washington-Ankara-Baku-Tashkent axis, in the region where both Iran, Russia and the United States have considerable interests.

Sino-Iranian relations are based on common energy policy interests. Iran is a significant exporter of natural gas to China: 14% of China’s imports come from Iran. Another country Iran enjoys good relations with is Venezuela, whose president Hugo Chavez is a prominent symbol of the “alternative” to liberal democracy and American global hegemony. Iran’s military buildup can only be understood as a function of that country’s strategic interest to become a global player.

Nuclear aspirations

If Iran achieves nuclear capability, this could endanger the security of Israel. Iranian president Mahmoud Ahmadinejad is on the record calling for “wiping Israel off the map”.¹⁰ Becoming a nuclear power would further strengthen Iran’s position within the Muslim and Arab world, weaken U.S. partners such as Saudi Arabia and Turkey, and require stronger U.S. efforts to maintain the balance of power in the region. However, the situation is somewhat complicated and difficult to understand due to the existence of a *fatwa* — a binding religious directive — issued by Ayatollah Ali Khamenei, the supreme religious leader of Iran, which explicitly forbids the development, production, storage and use of nuclear weapons.¹¹

⁹ Arunoday Bajpai, *World Panorama – BRIC Summit Vision for New Global Order*, Pratiyogita Darpan, New Delhi, India, 2009, p. 248.

¹⁰ “Ahmadinejad: Israel must be wiped off the map”, IRIB News, 26 October 2005. Internet: http://web.archive.org/web/20070927213903/http://www.iribnews.ir/Full_en.asp?news_id=200247

¹¹ Collier, Robert, “*Nuclear weapons unholy, Iran says. Islam forbids use, clerics proclaim.*”. *The San Francisco Chronicle*. October 31, 2003, <http://www.sfgate.com/news/article/Nuclear-weapons-unholy-Iran-says-Islam-forbids-2580018.php>.

With a population of 80 million and neighbors such as Iraq, Azerbaijan, Armenia, Turkey, Turkmenistan, Afghanistan and Pakistan, it is clear at a glance that it very much matters whether Iran is a stabilizing or a destabilizing factor in the region. Even without nuclear capability, a potential Iranian intervention in any crisis situation in the region — e.g. the Armenia-Azerbaijan dispute, Turkish-Armenian relations, internal Afghan divisions or Pakistani politics — could have a significant impact not just on the countries involved, but on global security. From the standpoint of “hard power,” Iran plays a significant role in arming, funding and politically supporting organizations such as Hamas and Hizbullah. Both have played a significant role in the Israeli-Palestinian conflict, and in wider Middle East politics. Iranian influence in these two organizations was the primary reason the United States termed Iran a part of the “*axis of evil*”.¹² In the context of “war on terror”, the Iranian funding and aid to organizations considered by the U.S. to be terrorists exposes Iran to the possibility of being declared a legitimate target. Therefore, even without nuclear potential, Iran has a significant role in matters of regional and global security.¹³

On the other hand, over the past 33 years Iran has been in a state of constant struggle between the reformers (e.g. former President Mohammed Khatami), conservatives (Supreme ayatollah Ali Khamenei and to some extent current President Ahmadinejad) and centrists (e.g. former president Ali-Akbar Hashemi Rafsanjani).

Alaysts well acquainted with Iran point out that Tehran is “Islamic by day, and liberal by night”. Life in Iran is a strange dichotomy of publicly being openly Islamic, while in private enjoying relatively substantial autonomy. This dichotomy actually makes Iran far more “Western” than suits the radical Islamists. However, it is difficult to eliminate, partly because it has deep roots in the political and social past of the country. Even the 1979 revolution was a pluralist endeavor of Communists, nationalists and theocrats.

However, all other analysis — alternative politics, global power balance, ideology — pale in comparison to the defining fact of Iran’s position towards the international community: its sponsorship of terrorism, terrorist organizations and individuals, and active involvement in theaters of war. This role is destabilizing and entirely negative. During the wars in the former Yugoslavia in particular, Iran exported radical Islamic ideology, intelligence operatives and murderers, along with substantial quantities of arms that, with U.S. government’s knowledge, reached Bosnia-Herzegovina via Croatia.

¹² See: *Shaul Shay, The Axis of Evil: Iran, Hizballah, and Palestinian Terror*, Transaction Publishers, ICT, Tel Aviv. 2005.

¹³ Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism*, 2011 July 31, 2012, Chapter 3: State Sponsors of Terrorism, United States-Department of State: <http://www.state.gov/j/ct/rls/crt/2011/195547.htm>.

Iran's military capabilities

That Iran is willing and able to retaliate against an armed attack has been long established. The exact nature of such response, and the length to which it is prepared to go, however, still remain subject to conjecture. Where does Southeastern Europe fit into this equation, and how much force, actual and potential, can Iran project in this region? Is Iran capable of asymmetric warfare, initiating conflict at flashpoints around the world — the Middle East, Central Asia, the Caucasus and Southeastern Europe — in retaliation for being attacked?

Recent clashes between Israel and the Palestinians in Gaza have served Iran to distract the international community from its nuclear program. It is reasonable to fear that Iran incited the Palestinians — it would not be the first time — and supplied them with missiles for targeting Israel.¹⁴ For example, leaders of the terrorist organization “Palestinian Islamic Jihad” thanked Iran for its support of the Palestinian cause.¹⁵

In the wake of the Gulf Crisis of 1990-91, Tehran concluded that only nuclear weapons and strategic strike capabilities could deter the US from intervening militarily to contain the ascent of the Iran-led Islamist-jihadist trend. Shortly afterwards, in late 1991, Iran purchased its first operational nuclear weapons from ex-Soviet Central Asia. The deal included the following nuclear weapons:

- (1) Two 40kt warheads for a SCUD-type ballistic missile that should fit on any SSM that was a derivative of the basic SCUD, and was in operational status;
- (2) One aerial bomb of the type carried by a MiG-27 that was in operational status; and
- (3) One 152mm nuclear artillery shell that was at an unclear operational status and was later transferred to the PRC.¹⁶

These weapons reached initial operational status in late January 1992, and a full status by April. In October 1992, Ayatollah Ali Khamenei made an

¹⁴ Lappin, Yaakov, Omer-Man, Michael, *Iron Dome intercepts 2 Fajr-5 missiles aimed at Tel Aviv*, *Jerusalem Post*, Jerusalem, Isreol, 17 November 2012: <http://www.jpost.com/Defense/Article.aspx?id=292277>.

¹⁵ *Palestinian Islamic Jihad praises Iran's support for Palestinians*, IRNA-Islamic Republic News Agency, Tehran, Nov 16, 2012: http://old.irma.ir/News/Politic/Palestinian-Islamic-Jihad-praises-Iran_s-support-for-Palestinians/80418039.

¹⁶ Yossef Bodansky, *US Confirms Consistent Defense & Foreign Affairs Reporting Since 1992: DNI Noted He “Cannot Rule Out” That Iran May Have Already Acquired Nuclear Weapons*, Defense & Foreign Affairs Special Analysis, ISSA, Alexandria, US, Volume XXVII, No. 10, Wednesday, March 11, 2009.

inspection tour of the key military facilities in Isfahan and ascertained the country's nuclear operational capabilities.

In the fall of 1992, Iran signed a new deal with officials in Kazakhstan for the purchase four 50kt nuclear warheads, upgraded and already adapted for installation on top the SSMs purchased from the DPRK. These warheads were eventually shipped to North Korea where they were upgraded and optimized for the soon-to-be delivered No-dong-1 SSMs.

Iran wanted the North Korean experts to have the opportunity to ensure that these warheads would effectively fit on top the long-range delivery platform. These warheads and the new SSMs were delivered to Iran in Spring 1993 and entered operational service soon afterwards. Concurrent to the acquisition of initial strategic nuclear capabilities through the import of missiles and warheads, Tehran committed to the development and production of strategic weapons in Iran reflecting Tehran's anticipation of a growing rift with the rest of the world as a result of the ascent of the Islamist-jihadist trend.

Starting mid-1999, and more so since Spring 2001 — the same period of time bin Laden was preparing for, and then carrying out, the terrorist “spectaculars” against the heart of the United States — the Iranian military build-up centered on the acquisition of strategic military capabilities for the conduct of a regional war involving the US and Israel.

Most significant was the acquisition in Ukraine in 2001 of a total of 12 Kh-55 (ground-launched from trucks) and Kh-55M (air-launched from Iran's Su-24s) supersonic cruise missiles (which, with a 1,870 mile-range are optimized for challenging US carrier task forces) and four or six 200kt nuclear warheads for them.

In a deal bankrolled by Iran and organized by Sarfraz Haider, an Iranian-Afghan Australian-resident arms dealer who was mysteriously murdered in Cyprus in 2004, Ukraine sold a total of six nuclear warheads and 18 cruise missiles. The PRC received six of these missiles and Iran twelve. According to some reports all six nuclear warheads went to Iran, while according to others, two of the warheads went to the PRC and the remaining four went to Iran. Significantly, the PRC embarked on a crash program to reverse-engineer and produce a nuclear-armed Kh-55 follow-up which Beijing has already promised to supply to Iran. Shortly before his death, Sarfraz Haider confirmed that the missile deal with Ukraine included six nuclear warheads. “What's the use of the missiles without them?” he asked rhetorically.¹⁷

The US Director of National Intelligence, Adm. (rtd.) Dennis Blair, said in testimony before the US Senate Armed Services Committee on March 11, 2009,

¹⁷ Sean Osborne, *Smoking Gun: Iran Already Nuclear Armed*, Northeast Intelligence Network, 19 March 2005, Internet: <http://www.homelandsecurityus.com/archives/53>.

that United States could not “rule out that Iran has acquired from abroad or will acquire in the future a nuclear weapon or enough fissile material for a weapon”. This was the closest the US Government has come to confirming that Iran had, indeed, acquired nuclear weapons from external suppliers.¹⁸

Iran and the “Arab Spring”

Events of what the media have dubbed the “Arab Spring” — though “American Spring” would fit just as well — have resulted in a new balance of power in the Arab world, dramatically increasing the risk of American intervention. The overture to the “Arab Spring” was the Israeli-Lebanese war. For years, members of Hizbullah fired missiles into Israel from Lebanese territory. Hizbullah itself has become a parliamentary party with several ministers in the Lebanese cabinet. In 2006, however, Hizbullah abducted two Israeli soldiers. The seizure, in addition to missile and artillery attacks, served as the trigger for Israeli military intervention. Bombing of one country from the territory of another is recognized in international law as an act of aggression. Lebanon once again paid the price of conflicting interests of regional powers, and international politics; Israel would have never received the green light to intervene, had Hizbullah not been part of the Lebanese government at the time. The intervention also tested the possibilities of U.S. attack on Iran. Though Israeli warships had “stealth” technology, making them less detectable by radar, Hizbullah missile crews managed to hit one Israeli vessel about 10km off the shore of Beirut.¹⁹

Hizbullah leader, Sheik Hassan Nasrallah, addressed the citizens of Beirut via Al-Manar television, asking them to look out their windows. Within moments, they saw an explosion of the Israeli stealth vessel.²⁰ To the American administration, the successful use of Iranian missiles by Hizbullah meant that Iran was in possession of anti-stealth technology. Direct intervention plans had to be put on hold. Instead, Iran was targeted by subversive and psychological warfare, aiming for internal political destabilization. The so-called “color revolutions” are more effective and far less expensive than direct action. Such a scenario played out in 2009.

¹⁸ Dennis C. Blair, *Senate Select Committee On Intelligence*, February 2009, Intelligence Community Annual Threat Assessment, Internet: <http://intelligence.senate.gov/090212/blair.pdf>.

¹⁹ *Israeli Military Says Missile Struck Warship Instead of Drone*, Associated Press, July 16, 2006: <http://www.foxnews.com/story/0,2933,203453,00.html>.

²⁰ *Unmanned Hezbollah Aircraft Attacks Israeli Warship Off Beirut*, FoxNews.com, July 15, 2006: <http://www.foxnews.com/story/0,2933,203453,00.html>.

After the presidential election in June 2009, mass protests broke out against President Mahmoud Ahmadinejad. Opposition leader Mir-Hossein Moussavi claimed the vote had been fraudulent and riddled with irregularities. From the posters to the chanting to the media coverage (“Green Revolution”, the “Persian Awakening”), everything was reminiscent of the “color revolution” template first tested in Serbia, then in Ukraine (“Orange revolution), Lebanon (“Cedar Revolution”) and Georgia (“Rose Revolution”).

In all those cases, U.S. institutions such as the National Endowment for Democracy were directly involved, as were some officially retired intelligence operatives. Though the U.S. government cannot be directly linked to the aforementioned “social upheavals”, a simple cause-and-consequence analysis, along with a simple “*cui bono?*” clearly indicate an American hand behind them. A similar pattern emerges in the so-called Arab Spring, which resulted in a new political alignment in the Mediterranean, Middle East and Central Asia. Powers like China and Russia are justified in fearing that such subversive scenarios may eventually be deployed against them.

Recent NATO and U.S. experiences in fighting terrorism have demonstrated that the American-led alliance cannot achieve military success in battling Al-Qaeda or rebel guerrillas, as demonstrated in Iraq and Afghanistan. Overwhelming superiority in aircraft carriers, submarines, fighter jets, tanks and other armament does little when faced with the most powerful weapon of today: the suicide bomber. It is the one weapon the West does not have, but rather those the West has branded terrorists.

Like other conventional military forces, the U.S. armed forces are designed to fight conventional armies and state structures. There have been some cases in which conventional forces have enjoyed limited success against terrorists. However, experience has shown (eg. the British in Northern Ireland, the Spanish in Baque, and the Americans in Afghanistan) that regular forces cannot defeat terrorist employing guerrilla tactics even on their own home turf, let alone in distant occupied territories.

The intended effect of the “Arab Spring” may well be to flush the Islamists of all sorts into the open — bring them into actual government positions, so they can no longer hide behind “friendly regimes”. That way, the actual countries can be held liable for the actions of terrorists and their sympathizers, and targeted for military action unless they act to prevent them.

The best example might be Egypt. Its “Muslim Brotherhood” belongs to the category of radical Islamic movements, with members also belonging or sympathizing with Al-Qaeda.²¹ Almost every Al-Qaeda leader belonged to the

²¹ El-Awaisi, Abd Al-Fattah M. “Jihadia Education and the Society of the Egyptian Muslim Brothers: 1928-49”. *Journal of Beliefs & Values*, Vol. 21, No. 2 (2000): 213–225.

Brotherhood, including Osama bin Laden himself, Saif al-Adel and Ayman al-Zawahiri.²² Today, Brotherhood members occupy high government offices in Egypt, up to and including President Mohammed Morsi.

From the standpoint of the world's sole remaining superpower, the "Arab Spring" looks like a great American victory. However, it is difficult to foresee the long-term consequences of these events. It is well worth remembering that the U.S. has blundered previously — for example, by agreeing with the ouster of Reza Shah Pahlavi in favor of radical imams and their Islamic Marxism. Or, for that matter, by establishing Al-Qaeda in the first place, which was publicly acknowledged.²³ The consequences of these blunders are then felt by the entire international community.

Another thing the subversion campaign known as the "Arab Spring" has done was to alter the dynamic of the relationship between the United States and the Al-Qaeda terrorists. Thus NATO troops collaborated with Al-Qaeda fighters in the overthrow of Colonel Qadhafi in Libya. Indeed, some of the very same jihadists who had fought NATO troops in Afghanistan and U.S. troops in Iraq, became NATO and U.S. allies in Libya. A similar scenario is now unfolding in Syria.

The relationship can thus be expressed in three phases:

1. Creation of, and close cooperation with, Islamic jihadist organizations (mujahedin, Al-Qaeda) by the United States, against the common enemy (USSR);
2. Diverging agendas produce conflict (in particular after September 11, 2001);
3. Realignment against new common enemies (following the deaths of Bin Laden and Qadhafi): Iran, China, Russia;

Keeping in mind this new reality of U.S. cooperation with, or at the very least tolerance towards, Islamic fundamentalists, an increasingly Islamic Turkey, radically Islamic Saudi Arabia and various other Islamic militant movements in the Middle East and Central Asia, the following questions arise:

1. What after Syria?
2. Who is next? Iran, Russia, China, or...?

²² Daniel Greenfield, *Every Al Qaeda Leader was a Member of the Muslim Brotherhood*, Frontpagemag.com, October 2, 2012 : <http://frontpagemag.com/2012/dgreenfield/every-al-qaeda-leader-was-a-member-of-the-muslim-brotherhood/> .

²³ Cook, Robin (2005-07-08). "The struggle against terrorism cannot be won by military means". London: Guardian Unlimited. Retrieved 2005-07-08. See: "Forgotten Coverage of Afghan 'Freedom Fighters', The villains of today's news were heroes in the '80s", January/February 2002, Fairness and Accuracy in Reporting: <http://www.fair.org/index.php?page=1094>.

Conclusion

Though there is a religiously binding *fatwah* against the production, storage and use of nuclear weapons, Iran is in possession of nuclear weapons of foreign origin, and is finalizing the build-up of domestic capabilities to produce nuclear weaponry. Iran is already a regional power with well-developed capabilities of waging asymmetric warfare and provoking crises elsewhere in case it comes under attack. Given the recent rapprochement between the United States and the Sunni Islamist groups, it is reasonable to speculate whom that alliance might be targeting. Given the history between the U.S. and Iran, Tehran has reasons to believe the greatest threat to its interests and even survival comes from the U.S. Yet any military intervention against Iran would have wide-ranging consequences not only in the military and security spheres, but in the world economy, from spiking the price of fuel to increasing the likelihood of a global crisis.

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Hague justice through prism of new forms of criminal responsibility

ABSTRACT

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY) was established by Resolution 827 of the UN Security Council, on 25th May 1993. Such establishment of the international tribunal led to it being disputed, primarily due to the fact that it was established by the UN body, which does not have judicial authorizations and therefore cannot transfer them to one of its subsidiary organs. However, the ICTY has successfully fought all challenges of such nature out, but it triggered a series of debates in the professional community with promotion of new forms of criminal responsibility - from impugment to unconditional approval. With critical review of specific interpretation of the concept of command responsibility and construction of joint criminal enterprise through practice of ICTY, the autor points out the tribunal's inconsistency in interpretation of these forms of criminal responsibility, as well as the presence of elements of strict liability, otherwise unallowed in criminal law.

Key words: crime, tribunal, ICTY, command responsibility, JCE, joint criminal enterprise

1. Criminal responsibility of superior for acts of its subordinates

After the end of the World War I, international community started elaborating more seriously the question of superior's responsibility for unlawful acts of its subordinates during armed conflicts. However, only the mass of crimes and system in committing them during World War II pushed winning forces into seriously focusing on this problem. London agreement of establishing Nuremberg trial rejected the possibility of defense by calling up on superior's orders. However, they were supposed to find a way to bring to the

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face of justice all those who did not order the crimes directly, but knew of them, or should have known that their subordinates were committing crimes because of nature of their duty, but failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. The idea of such command responsibility developed into a doctrine through international agreements, firstly Protocol I additional (1977) to the Geneva Conventions from 1949, got its full swing on trials of ad hoc courts after the World War II, and as a special form of criminal responsibility, it was shaped by Statute and practice of ICTY. The concept of command responsibility as criminal responsibility of superior for the acts of its subordinates, especially in its wider form that is in the practice of ICTY, opened new questions that worldwide legal experts have opposed opinions about. The most important questions are those about legality, legal nature and boundaries of command responsibility.

1.1. Legality and legal nature of command responsibility

By getting an answer to the question if using the concept of command responsibility in practice of ICTY distorts the principle of legality in criminal law, we get an answer to the question if command responsibility is a new form of criminal responsibility for already existing crimes or if it is a new crime. In his report regarding UN Security Council resolution 808 from 22nd February 1993 that established ICTY, Secretary-General of the UN emphasizes that the use of the principle *nullum crimen sine lege* dictates that ICTY should use norms of international humanitarian law that have undoubtedly become part of customary law.² In accordance with jurisdiction *ratione personae*, such opinion was transfused into article 7 of the Statute of ICTY that established individual criminal responsibility as basic standard of the Tribunal for prosecution of those who did or ordered heavy violations of Geneva Conventions from 1949 based on criteria of execution of crime (directly or on order). Planning, preparing or direct execution of those violations is considered committing, and in accordance with precedent from after the World War II, responsibility for heavy violations of international humanitarian law includes state chiefs and other state officials and persons that act in boundaries of their official positions.³ Paragraph 3 article 7 of the Statute establishes that responsibility of superiors exists because of failing in preventing crime or deterring its subordinates from illegal acts, and in the explanation of Secretary-General of the UN it is called imputed responsibility or criminal neglect, that could be interpreted as criminal negligence.⁴ In article 86 of Additional protocol

² Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993), presented 3 May 1993 (S/25704), §31.

³ *Ibid.*, §53–55.

I command responsibility (responsibility for given orders) already had its normative indirect form, but in the Statute of ICTY it is expanded on responsibility for not punishing executors of crimes. Responsibility for not punishing was applied on trials against Japanese generals Yamashita⁵ and Matsui,⁶ as well as German field marshal Von Koehler.⁷ In case My Lai,⁸ responsibility of general Koster was determined because after finding out about the crimes he did not take necessary measures to punish the executor, however, discipline responsibility was established instead of criminal. All cases above are creation of American court-marshal, and the decisive influence of the USA on establishing ICTY, as well as on the norms that it will work by, is undeniable. Thirty years later, legal experts who participated in making the Additional protocol I did not find justified introducing criminal responsibility for not punishing, and that is why the implementation of the same in the Statute of ICTY is even more arguable. The explanation could be found in the fact that trials in the wake of the World War II were organized by winning forces and performed by court-martials, and that ICTY formed under specific influence of NATO pact, hence a military force —it was not established based on law or under the supervision of any of the juridical bodies (commission) but it was established on the order of the Security Council as its subsidiary body. Never before that did it happen that the Security Council formed a subsidiary body with juridical jurisdictions because the Security Council simply does not have juridical authority that could be transferred to any of its subsidiary bodies. And so, on the insistence of American ambassador in the Security Council, Madlen Albright, concept of command responsibility was expanded to responsibility for not punishing. We can make a reproach to such stand for the absence of cause and effect relationship between not punishing and crime that was committed. Such expanded concept got even wider in the verdict of Trial Chamber in case Hadžihasanović — it was expanded on responsibility for not punishing for crimes that happened before coming to command duty. This was rejected by the Appeals Chamber as groundless

⁴ *Ibid.*, §56.

⁵ Japanese General Yamashita was sentenced to death, although objectively did not have effective control over troops that committed crimes in Manila, and in opinion of the Military Commission of the United States he had opportunities but still failed to prevent the crimes or punish the perpetrators.

⁶ Tribunal for the Far East (Tokyo) sentenced to death Japanese General Matsui Iwane for massacre of civilians that committed the forces under his command during 1931 in Chinese city Nanking.

⁷ Field Marshal Von Koehler was held responsible for unlawful liquidation of members of Red Army that occurred prior to his taking command, and after that, although informed of the murders, he failed to take the necessary measures to punish the perpetrators. As a matter of fact, the same acts were continued under his command.

⁸ Vietnamese hamlet in which the U.S. troops massacred civilians 16th May 1968.

because it does not have stronghold in customary law.⁹ However, two of five judges of the Appeals Chamber (Mohamed Shahabuddeen and David Hunt) singled out opposed opinion, based on the stand that necessary basis in international customary law lies in already existing principle of that same law if the principle is interpreted correctly,¹⁰ that is, in the attempt to prove the same with a different (more free) interpretation of existing norms of international law, which does not exclude a different verdict in another case. One of the arguments is the possibility of evading responsibility of superior through constant rotation of command duties, which is understandable up to one point but does not decrease the impression that declaration of superior being criminally responsible because he did not punish executors of crimes that were committed when there was no superior-subordinate relationship is based, not even on strict liability, but more on an absurd liability. Not far from that is the equalization of responsibility for not punishing even when there was a superior-subordinate relationship with responsibility for crimes that were committed. On the other hand, having in mind the moral duty of reaction to crime, even by informing about knowing of the same to competent authorities, calling superior on discipline responsibility in such situations could have sense, because it would be a form of fighting against silence about events and collapse of superior's conscience, whether because of him being uninterested or because of the need not to get into conflicts with coworkers, as well as a measure against covering up crimes. In certain amount, if the information about crimes that were done could have been attainable only to that superior by the time of finding out about it, and he still did not take further measures of informing competent organs or punishing executors in boundaries of his own jurisdiction, with an aim to cover them up, it would be covering up the crime, which is incriminated in national criminal legislations and article 7 paragraph 1 of the Statute of ICTY.

1.2. Boundaries of responsibility of superior for crimes of subordinates

Question about boundaries of criminal responsibility of superior for crimes committed by his subordinates is completely justified. Responsibility of superior can be observed as guaranteed duty, which, by functionalism method, has two contents — protective and supervising.¹¹ In verdicts of panel of judges of ICTY, protective duty of military commandants toward civilians in zones where their

⁹ The decision of the Appeals Chamber on the Interlocutory Appeal Challenging Jurisdiction in relation to command responsibility, in the case "Prosecutor v. Enver Hadžihasanović and others, 16th July 2003, § 41–56.

¹⁰ *Ibid.*, §40.

¹¹ Franjo Bačić, *Zapovjedna odgovornost*, Hrvatski ljetopis za kazneno pravo i praksu, vol. 8, 2/2001, Zagreb, p. 144.

units take action is often emphasized. It undoubtedly exists, it is studied in military schools and it is provided in military manuals, but in case of responsibility of superior for act of his subordinate, supervising guarantee duty is more important. Military regulations are legal basis for the existence of such duty — duty of military elder to have full control and supervision over the area that is in zone under his responsibility, meaning control and supervision over acts of subordinates, especially in very sensitive conditions of armed conflicts. However, there have to be real boundaries of that responsibility. Military elder is a human being, in a physical meaning, as well as any other soldier that is his subordinate, but as for the education, he stands out not only by the level of military expertise but by mental capabilities that allow him to be in control in warfare. Still, there are levels of commanding that have bigger or lesser possibilities of supervision over each soldier depending on the position in the battle formation. It is certain that those possibilities are far wider to department commander than to division commander. In order to know what is happening in every department, division commander has to have excellent information web, and by military regulations that process of informing goes through process of subordination. In that commanding chain, we go from assumption that every link is made of honorable and decent people, so there is *a priori* trust in reports that are given, but on certain level, on certain position in commanding chain there is a possibility of keeping things from others, meaning giving false reports that superior elder cannot foresee up front. Because of that, prosecution should affirm with great certainty that the accused superior was exactly and completely informed of crimes on field. Certainly there are situations when the mass of crimes is such that knowledge of higher-rank commander is not questionable, but even under those circumstances, the very fact that someone is on command position cannot be assumption of his guilt for crimes of his subordinates to the lowest level. Even in determinant “knew or had reasons to know” hints assumption of knowing, which implies the assumption of guilt. Equally, taking “reasonable” measures leaves space for manipulation during estimation what those reasonable measures under specific circumstances really are and whether they could have been carried out by superior.¹² Change in position of onus of proof is in conflict with the principle of presumption of innocence and presents an affirmation of objective responsibility in criminal law. On one side, there is the duty of superior’s action and on the other, the execution of crime by subordinate, and what happened in between those two sides, the circumstance whether there is any mutual relationship that there is no responsibility without is marginalized. In order to prove guilt of a superior based on failing to fulfil

¹² Military Tribunal for the Far East in the case Yamashita ignored the fact that American army cut off communications and disabled any contact between general Yamashita and his units that were hundreds of kilometers away committing crimes.

guarantee obligation, causal relationship between his missing out on supervising and crime that was committed by subordinate should be ascertained, in a way that it can be claimed with great possibility that missed measures of supervision could have prevented execution of crime.¹³ Panels of judges of ICTY take the stand that it is not necessary to prove causal relationships between superior's no action and subordinates' crime. And so, the Trial Chamber based such conclusion in case Čelebići on the very existence of the principle of responsibility of superior for omission of punishing.¹⁴ The conclusion of this Trial Chamber was gladly accepted by other panels of judges of ICTY. The Trial Chamber in case Halilović deems that existence of causal relationship as a condition would change basis of command responsibility for omission of preventing or punishing in amount that would practically need commander's involvement in crime that his subordinates committed, which would change the very nature of command responsibility established in article 7 paragraph 3.¹⁵ We cannot agree with this, because there is definitely indirect involvement of superior in crimes of his subordinates under circumstances of failing in preventing them. If it were not like that, there would not be his criminal responsibility. The Appeals Chamber in case Blaškić emphasizes that the problem of causality is more a question of facts that should be ascertained in each case individually than a general legal question,¹⁶ but even in case of this chamber the "questions of facts" was brought down to accepting opinion of panels of judges from case Čelebići. Such approach of ICTY is in accordance with some of theoretical opinions that causality is not relevant for crimes of omission, but there are opposed opinions, and they are in our jurisprudence (Lazarević, Srzentić, Stojanović).¹⁷ However, up to what extent is causality "irrelevant"? Ignoring causality questions sense of "reasonable" measures, because they cannot be taken unless even mind projection of causal relationship between wanted acts of superior and possible illegal actions of subordinates is possible. That projection of future is component of negligence, but even that has to have its boundaries. In practice, rejecting necessity of proving causal relationship significantly facilitates the job of Prosecution, and puts accused ones into very ungracious position since with that the boundaries of

¹³ Franjo Bačić, *op.cit.* (footnote 11), p. 40.

¹⁴ Trial Judgment in the case „Čelebići“ – Prosecutor v. Zejnil Delalic et al. No. IT-96-21-T of 16th November 1998, §396, 398 and 400.

¹⁵ Trial Judgment in the case Prosecutor v. Sefer Halilović, No. IT-01-48-T of 16th November 2005, §78.

¹⁶ Appeal Judgment in the case Prosecutor v. Tihomir Blaškić, No. IT-95-14-A of 29th July 2004, §77.

¹⁷ Nedeljko, Jovančević, *Izvršilaštvo i saučesništvo kroz nečinjenje*, Anali Pravnog fakulteta u Beogradu, godina LIX, 1/2011, p. 345–366.

responsibility in commanding chain are lost, there is a complete legal insecurity, because everything is left to free estimation of acting judges. And so, in case Blaškić, the Prosecution ascribed to the accused responsibility on two bases – for ordering execution of crimes in village Ahmići, as well as for failing to prevent or punish for those crimes. Giving orders to commit a crime produces direct command responsibility that, as a heavier form, consumes indirect form of the same so the purpose of such indictment could be questioned, and the answer could be that the Prosecution only made a retreat by including the failure in preventing or punishing committed crime in lack of firm evidences that the accused ordered execution of crimes. And indeed, Blaškić was declared guilty and was sentenced to a draconian punishment of 45 years in jail, but that same sentence was changed after appeal to even five-times shorter punishment — 9 years of jail. In the appeal, the existence of so called „double line of command“ in village Ahmići was affirmed, so it was ascertained that those crimes were committed by forces outside of effective control of general of HVO (Croatian Defence Council), Tihomir Blaškić, and it seems that by the evidences in the appeal, an acquittal could have been made but in that case, more that eight years spent in prison (custody) would become a problem.

Affirmed existence of double line of command in case Blaškić, opened a new page in the approach to command responsibility in front of ICTY. Command responsibility could no longer be observed on automatism, but more attention should have been on proving the existence of effective control, because without it there is no superior-subordinate relationship. It was proven that it is not necessary that the superior is legally authorized to prevent or punish, but not even the fact it is does not make it really possible unless the superior does not have firm mechanisms that can prevent subordinate from committing crimes or punish him for what he had already done.

1. Critical view of JCE

By introducing the concept of joint criminal enterprise in the practice of the ICTY, outside existing statute, appeared many questions, which there are still not precise answers to that would clear all doubts regarding validity of its applying. Key questions concern the legality of the legal institute, its legal nature and respect of the principle of causality and guilt.

1.1. The principle of legality

In already mentioned report, the Secretary General of the UN pointed that corpus of rights whose application the ICTY has the authority for, “exists in the form of conventions’ law and customary law“, and that approach is necessary

in order for all states to equally abide the rules of international humanitarian law, which beyond any doubt became part of customary law. In applying such corpus of rights, ICTY applies the principle of legality (*nullum crimen nulla poena sine lege*).¹⁸ Joint criminal enterprise (JCE), as a form of committing a crime, was constructed in sentence of the Appeals Chamber in the case Prosecutor v. Tadić and other sentences that ensued. The Appeals Chamber in the case Prosecutor v. Tadić pointed out that they are aware of the fact that JCE does not exist in the Statute as a crime (§2-5) and with an arbitrary interpretation of the article 7(1), they defined it as a form of criminal responsibility, relying on the principle of legality in form of alleged trial practice and conventions as foothold in the international law. The Appeals Chamber in the case Prosecutor v. Milutinović and others asserted that ICTY, according to the Statute, has *ratione personae* to establish a new form of criminal responsibility, among other, under condition that it existed in the international customary law in relevant time in a way that it was reachable for anyone who acted.¹⁹ Analyzing trial sentences that the Appeals Chamber in the case Prosecutor v. Tadić got on, which ones were later accepted and got on by other trial chambers of the ICTY, we get the impression that they selectively extracted from them segments that would, if not legally then at least linguistic associatively, connect those sentences with construction of joint criminal enterprise that was established five decades later. The fact that during that period law theory did not recognize such novelty in criminal law is a serious indicator that such new-developed form of criminal responsibility actually does not exist outside previously known law institutes in international customary law, as a form of criminal responsibility and as a way of connecting participants in a criminal event. Such concept is unknown in most of national legislations, especially in those states that have a very important role in international relations, such as Germany, France and Spain, as well as in the states of region where the crimes happened and whose citizens sit on the dock of the ICTY — Bosnia and Herzegovina, Croatia and Serbia. It must be taken into consideration that the United States did not approach the Rome Statute, they even expressed their opposition against it, which compromises this international contract as a creditable proof of customary law. So, contrary to the taken point of the trial chambers of the ICTY, concept of joint criminal enterprise has not been affirmed neither in this one nor in other international contracts.

¹⁸ Report of the Secretary-General, *op.cit.* (footnote 2), §33.

¹⁹ The decision of the Appeals Chamber in the case Prosecutor v. Milutinović et al., on objection of Dragoljub Ojdanić, 21 March 2003, §21.

1.2. Legal nature of JCE

Analyzing legal nature of the JCE, we would have to answer the question whether this is a new offense or a new element of the term of crime. Recognizing problems of legality which they would be faced with qualifying the JCE as a new offense, the Appeal Chamber in the case *Prosecutor v. Tadić* aligned it in a form of criminal responsibility, asserting that the Statute of the ICTY does not limit itself only to forms of criminal responsibility listed in article 7 (1). It found a justification in the fact that the nature of massive crimes is such that they are always committed in association, where the roles are divided, but bearing in mind the final consequence, by opinion of the Chambers, guilt would have to be equally divided on direct perpetrators and other participants that contributed to that criminal act in different ways. The Chamber considers that the majority of international crimes „are not result of the criminal tendencies of individuals, but they are manifestations of collective criminality“.²⁰ It could be argued that this claim is rendered very awkwardly, because it undermines the criminological and psychological postulates of nature of crime, and in the most direct way possible dilutes individual criminal responsibility, affirming at the same time collective responsibility in international criminal law. We have to put the problem in the scopes of individual criminal responsibility, and the modern legal theory has classified the individual criminal responsibility in two basic forms — the responsibility of direct perpetrators of crime (perpetration) and the responsibility of other participants who contribute to its perpetration in different ways (complicity). The Appeals Chamber put an equal sign between the moral weight of perpetration and complicity in crimes with common criminal plan,²¹ which calls into question the criteria for the imposition of sanction, since it is determined primarily by the shape and extent of participation in a crime. The fact that it has been pre-planned and done in communion with others must be treated as an aggravating factor, not a need to invent a new form of criminal responsibility. The concept of joint criminal enterprise, the way it is applied in practice of the ICTY, is much closer to being qualified as a criminal offense, or even as *modus operandi* of the same crime. In the dissenting opinion of Judge Per-Johan Lindholm in the Trial Chamber in the case *Prosecutor v. Blagoje Simić and others*, as well as in the judgment of the Trial Chamber in the case *Prosecutor v. Stakić*, was expressed the same opinion that there is actually a case of complicity, long known concept in modern criminal law and international

²⁰ Appeal Judgement in the case *Prosecutor v. Tadić Duško aka Dule*, No. IT-94-1-A of 15th July 1999, §191.

²¹ *Ibid.*

criminal law.²² The Trial Chamber in the case Stakić noted that *mens rea* cannot be changed introducing new form of responsibility, and that by converging the JCE concept to the term of execution actually avoids creating an impression that a new criminal offense, which is not provided by the Statute, is being introduced in criminal law through small door, and that it could be called „membership in a criminal organization.“ The Appeals Chamber set aside the judgment of the Trial Chamber in the case Stakić, arguing that complicity, the way that it was defined and applied by the Trial Chamber, is not confirmed of international customary law, as opposed to the JCE that is “firmly rooted” there!²³ Previous rendition about the legality of the JCE makes such claim of the Trial Chamber look completely unfounded.

1.3. Causality

The Appeals Chamber in the case Tadić said that in order to prove the joint criminal enterprise, participation of the accused in any criminal act within the enterprise is not necessary, but just the fact that these crimes occurred and that there was a probability of their predictability. Term predictability is already integrated in institute of guilt as an intellectual component of the consciousness which, together with the voluntary element, determines the form of culpability of each participant in a criminal event. Expressing an attitude that each participant is equally responsible for the crime, regardless of personal contribution that can be completely marginal, trial chambers of the ICTY lead intellectual and volitional component into objectification. The existence of a common criminal purpose proves itself *a priori* with the consequences of criminal act and thus evidentiary procedure obtains a reverse order — all other material evidence is introduced into the procedure in function of the one that was previously determined as the key evidence. Establishing criminal responsibility based on a predictability in the final outcome gives the broad mass of the defendants, practically all of which were in any way part of a system, by constructing chains of causality from which is essentially deduced a collective criminal responsibility. For the establishment of criminal responsibility on the basis of participation in systemic form of the JCE (JCE II) it is a sufficient fact that the defendant was on one of the duties in the concentration camp, including administrative, by imputing him awareness of

²² Trial Judgement in the case Prosecutor v. Blagoje Simic et al, No. IT-95-9-T of 17th October 2003 – Separate and partly dissenting opinion of Judge Per-Johan Lindholm, §2; Trial Judgement in the case Prosecutor v. Milomir Stakic, No. IT-97-24-T of 31st July 2003, §438.

²³ Appeal Judgement in the case Prosecutor v. Milomir Stakić, No. IT-97-24-A of 22nd March 2006, §62–3.

„crimes being committed in the camp and continuation of participation, which allows the operation of the camp“.²⁴ In that way, the blame can be attributed to cooks or doctors who are in such camp employees for feeding and curing prisoners and did not have personal stake in commission of the crime, nor did they want them. It is a responsibility based on membership in an organization (guilt by association), and in the judgment of the Trial Chamber in the case Stakić, it was rejected as a possibility because that would create a new offense and violate the principle of *nullum crimen sine lege*.²⁵ Accepting an objectively-based presumption of guilt of the accused, unless the defendant proves otherwise, the court ignores the presumption of innocence, which is guaranteed by Article 21 of the Statute of the ICTY.²⁶ In the third form of the JCE (JCE III), the establishment of guilt is based on the predictability of possible²⁷ or probable²⁸ consequences or possible acts of other participants in the enterprise,²⁹ outside of the JCE — which is nothing but Pinkerton rule of conspiracy as seen by customary law. The essence of a conspiracy is an agreement, which includes a subjective relationship toward an agreed activity, not an objective circumstance under which anybody could be associated with it. The Trial Chambers are also inconsistent in application of the principle *in dubio pro reo*. The Trial Chamber in the case Orić based its decision to release the accused from criminal responsibility exactly on the same principle,³⁰ while the Appeals Chamber in decision on the complaint of Ojdanić in the case „Milutinović and others“ found that this generally accepted principle of criminal law has no place in that matter. This selective approach is possible thanks to the fact that the establishment and application of the concept of the JCE violates the basic principles of criminal law, in addition to the above, even in terms of the principle of guilt (*nulla poena sine culpa*). Because of this it is not surprising that behind the scenes of the tribunal, more as reality than a joke, acronym JCE is not interpreted as “joint criminal enterprise”, but “just convict everyone”.

²⁴ Trial Judgement in the case Prosecutor v. Miroslav Kvočka et al., No. IT-98-30/1-T of 2nd November 2001, §278.

²⁵ Trial Judgement in the case Prosecutor v. Milomir Stakić, *op.cit.* (footnote 22), §433.

²⁶ Study of Croatian Academy of Legal Sciences, where footnote 456 indicates to Haan, „The Development of the Concept of Joint Criminal Enterprise at the International Criminal Tribunal for the Former Yugoslavia“, 5 Intl. Crim. L. Rev. 196 (2005).

²⁷ Appeal Judgement in the case Prosecutor v. Tadić Duško aka Dule, No. IT-94-1-A of 15 July 1999, §204.

²⁸ *Ibid.*, §220.

²⁹ *Ibid.*, §228.

³⁰ Trial Judgement in the case Prosecutor v. Naser Orić, No. IT-03-68-T of 30 June 2006, §608, 619, 632, 645, 676 и 707.

6. Conclusion

By determining command responsibility as a form of individual criminal responsibility, and proving its confirmation in international customary law, violation of the principle of legality is avoided, which it would inevitably come to if omission to prevent or punish crimes were qualified as a special criminal offense, because the application of it on armed conflicts in the former Yugoslavia would mark impermissible retroactive application of the law.

The existence of responsibility of superiors for omissions of subordinates cannot be disputed by anyone, because it is an imminent characteristic of that relation shown in two aspects — responsibility for fulfilling duties, his own and those of his subordinates, and responsibility for consequences, of his own acts and those of his subordinates. On that scale of responsibility, the intensity is not the same on all levels. On criteria of appeared damaging consequence, responsibility goes from moral, through discipline to penal, which can be misdemeanor and criminal. International team of legal experts foresaw, according to case, discipline or criminal responsibility of superior for failing to prevent crimes in article 86 paragraph 2 of Additional Protocol I, not mentioning which form such criminal responsibility should be manifested in — perpetration or complicity. Practice of ICTY has practically equalized the weight of crime committed by omission of duty with the one committed by giving order. It could be said that by significance that is given to it, responsibility for careless omission to punish perpetrators is equalized with responsibility for crimes committed with premeditation, and that one is equalized with responsibility for execution of crime, which practically equalizes responsibility based on negligence with responsibility based on intent. In this place, we can dispute sustainability of indirect form of command responsibility as a general law institute, because the nature of international humanitarian law is such that violations of the same are always with intent, and genocide is even with special intent, which absolutely excludes the possibility of negligence. In that sense, it is more right to qualify indirect form of command responsibility as individual crime of omission, i.e. of not taking appropriate measures in order to prevent execution of crimes against humanity and other rights established by international law, in a way that was done in Criminal code of Republic of Serbia. That way, it could be secured that someone who acted out of negligence could be punished more mildly than the one who did it with direct intent, unlike the situation that we have in the practice of ICTY where negligent omission of duty is equal to act behind which is criminal intent. Not in moral or in any other sense can be considered equally guilty the one who simply did not prevent something and the one who directly caused something.³¹

³¹ Jovan Ćirić, *Objektivna odgovornost u krivičnom pravu*, Institut za uporedno pravo, Beograd, 2008, p. 176.

It seems that the prosecutors of this tribunal are aware of that, so in order to facilitate proving their indictments they constructed a new form of criminal responsibility based on participating in joint criminal enterprise. As we have seen, claims that JCE is affirmed in international customary law are not legally grounded. On the contrary, normative and judicial practice of most of the states shows that existing forms of complicity include all possible ways of giving contribution to execution of crime in a completely satisfying way, which makes extrication of JCE unnecessary outside the process of sentencing. However, complicity cannot be constructed by giving only evidences that someone could have known something. With a thorough analysis of sentences, it can be easily seen that trial chambers of the ICTY apply the concept of JCE every time when it seems difficult or impossible to them to prove command responsibility, because this concept gives the prosecutors wide possibilities to accuse anyone of any illegal action of any other participant of JCE by already objective circumstances that they were on certain directing position, from lowest to the highest rank. That is much easier for the Prosecution than proving the existence of subjective elements of crime and intent that is divided with other direct perpetrators. All above indicates big gaps when applying the principle of guilt in front of the ICTY, ambiguities and inconsistency, and direct violation of the same via objectification of guilt, which is unacceptable in criminal law.

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The Importance of Preventive Acting in the field of Crime Suppression with the Reference to Strategic Acts of the Western Balkan Countries

ABSTRACT

Criminality is a very complex phenomenon and it is a national problem in all countries - developed countries and developing countries. In the field of crime is particularly highlighted organized crime. Organized crime is a significant threat to security, in national and international scale. Crime prevention is focused on the prevention of occurrence some of the forms of crime. Preventive action involve a range of different political, economic and legal measures taken by states at national, regional and international levels. Preventive fight against crime is based on certain principles that together meet the basic criminal-political goal, and it is successfully fight against crime, with legal, humane, legitimate treatment, with respect for human rights and freedoms. In the current social circumstances, repressive measures are a necessity in combating organized crime, and prevention is orientation of modern criminal policy, which is lately accented, because over time it became clear that the reactive approach, which focuses on the event, is not sufficiently effective in preventing criminal activities. Realizing the importance of preventive activities in the area of crime, Western Balkan Countries have adopted appropriate National Strategic Acts to regulate this area. These Strategic Acts are presented in more details in this paper.

Keywords: Crime, Organized Crime, Prevention activities, Strategic documents, Western Balkan Countries.

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Introduction

Criminality is known to be a most complex phenomenon, equally harmful to all societies and all levels of development. In order to comprehend the actual concept of criminality, we ought to take a close, multidisciplinary insight into it by using all our previously gained knowledge of different theoretical disciplines. Criminality is, above all, a social phenomenon which came out as a result of all social relations and processes altogether.

Another, but by any means far too important, aspect of studying criminality is, without question, the psychological aspect. However, this approach enables us to understand the behaviour of individuals, offenders and, most importantly, the victims of criminality.

The third aspect of analyzing criminality is merging the first and the second aspects and, as such, it can be defined as social-psychological aspect. Given the fact that many social phenomena have both social and psychological characteristics, this area has proven to be highly adequate for comprehending the interaction between social groups and individuals.

The fourth, that is, the legal aspect, is by far one of the most important ones which demands to be paid special attention to, especially given the fact that criminal offense inevitably leads to violating the principles of criminal legislation, so that, consequently, the legal treatment of criminality cannot be avoided.

Cultural aspect, on the other hand, is another point in analyzing the complexity of this social phenomenon. Needless to point out, criminal activity does not necessarily stand for a hazard to substantive law only, but also to moral patterns – a manifestation of cultural values of one particular society.

The sixth aspect of studying criminality is the political aspect. However, all political structures should take great interest in dealing with this serious social problem by directing their actions towards suppressing criminal activities and therefore making strong connections between institutions and organizations, aimed at preventing criminality.

And finally, criminality is also an economic category, which aspect cannot be avoided either. On one hand, most criminal activities lead to material losses of victims, but also, on the other hand, the fight against criminality requires some extraordinary financial investments for organizing departments, funds and personnel, all of which necessary in order for these activities to be implemented.

According to previously stated, it is to be pointed out that the multidisciplinary contained in the approach to criminality is not a matter of choice, but a highly requisite access to this complex social phenomenon.

Criminality is, nevertheless, characterized by several very important points. Firstly, it represents a legal category. Secondly, it is always influenced by

behaviour of individuals or groups. And thirdly, such behaviour inevitably leads to harming individuals, groups of people or a society as a whole.

Furthermore, criminality implies all forms of behaviour done by individuals or groups that can be subjects to treatment by criminal legislation in any way, as such behaviour always causes damage to individuals, groups or the society itself.² Being a national problem of all countries, apart from the fact whether it is the developed, advanced or developing ones, criminality is characterized by a high level of organization, both on the internal and international basis. Also, it is constantly increasing and its main characteristics are: upgrade of recidivism, professionalism and specialization, misuse of technical achievements and emergence of new criminal forms, privacy and the variety of organization and ways of acting, internationalization, enormous funds which include several different financial systems, weakened efficiency of detection departments, which is caused by increase of material costs necessary for crime suppression. On the other hand, capital realized by criminal actions, as well as the one that activates it, is constantly growing in the meantime.³

About the organized criminality

Out of all its forms, criminality is especially characterized by one in particular — organized criminality. It has its three key elements that help define it, and they are: 1.) organizational nature (a solid and hierarchically established nature), 2.) the goal of a criminal action is establishing profit and maintaining the higher, both economical and political power, possible, as well as seizing power, 3.) gaining close connections with the state, its authorities as well as the leading industrial and political subjects, all through its various strong and powerful methods of corruption.

Due to numerous changes in the field of economical and political matters, both on the internal and international levels, organized criminality seems to be getting more and more of an international aspect, as well as new forms of transnational organized criminality.

Having been one of the most important and specific forms of criminality and due to its ability of adjusting to numerous circumstances and situations, along with the possibility of using the new, modern technological achievements when dealing with illegal actions, organized criminality is, by far, the most complex and dangerous sort of crime in any society, and therefore, one of the greatest threats to modern times and humanity.⁴ Nevertheless, tight networks among

² Vladimir Krivokapić, *Crime prevention*, Police Academy, Belgrade, 2002, p. 3.

³ Vladimir Krivokapić, *Crime prevention*, op. cit., p. 7.

⁴ Strategy of Bosnia and Herzegovina in the fight against organized criminality (period from 2009-2012), Council of Ministers of Bosnia and Herzegovina, Sarajevo, 2009, p. 3.

criminals of all nationalities are involved with different sorts of lucrative “jobs”, especially the ones dealing with human trafficking, drugs or weapons, which have proven to be highly profitable. On the other hand, mafia cartels gain control over business transactions in certain areas and parts of the world by blackmailing, threatening, bribing and using force as well as other illegal instruments in order to prevent economy and society from developing. However, by achieving certain positions and being more influential in economical and political structures, the organized criminality becomes a severe threat to safety⁵ (both on national and international level), and can seriously jeopardize economical, political, legal, cultural, moral and all other aspects that are of great value to one particular society.⁶

Should we take a look into the situation in this part of the world, we will undoubtedly come to a conclusion that the “organized criminal groups” that come from countries of former Yugoslavia and Balkans have joined together, grown stronger and established a very close connection to the mafia, as well as the internationally organized criminality in countries of Western Europe, such as France, Italy and Belgium and therefore brought to danger new Balkans countries, including the European Union itself.⁷

However, one of the main points of criminality as a whole, especially the organized criminality worldwide is its “dark figure”, which rate is growing every day, mainly in the area of industrial criminality, is related to both criminal acts and the offenders themselves. It comes as no surprise, in this case, that the actual criminal actions that have been revealed and known of are outnumbered by the figure of the actions in total. Criminality, furthermore, especially organized criminality, is characterized by violence, which is no longer only a safety issue, but also a social, economical and political problem as well. Violence, on the other hand, is not an aim for itself, but it is also there for gaining some other, criminal goals, too.

In its resolution 98/c 408/01 from December 21, 1998, the European Council has suggested a number of measures for crime preventing with an emphasis on making a general strategy for these kinds of activities. In order to

⁵ Ministry of Justice and Public Administration, <http://www.mpravde.gov.rs/lt/news/vesti/jacanje-vladavine-prava-u-srbiji-kroz-borbu-protiv-organizovanog-kriminala-i-korupcije-21.-11.-2008.-godine.html> (downloaded: 15/01/2013).

⁶ Nebojsa Teofilovic and Tatjana Teofilovic, *Organized criminality suppression*, Anthology of papers “Prevention and suppression of modern forms of criminality II”, Criminal-police Academy, Belgrade, 2007, p. 124.

⁷ Ministry of Justice and Public Administration, <http://www.mpravde.sr.gov.yu/lt/news/vesti/jacanje-vladavine-prava-u-srbiji-kroz-borbu-protiv-organizovanog-kriminala-i-korupcije-21.-11.-2008.-godine.html> (downloaded: 15/01/2013).

fight criminality, the resolution itself insists on cooperation among all national security departments of the whole community. According to this resolution, the essence of preventing criminality is, primarily, preventing the black market from spreading, especially the illegal narcotic market. Along with this, it is highly recommended for an informational and educational network to be established in order to prevent criminality, thus public can be introduced to the results concerning the sources, nature and consequences of organized crime. It is also crucial for cooperation among departments of different states to be present (especially when we talk about the new forms and methods used in prevention of criminality).

As far as prevention of international criminality is concerned, a special role is given to the UN Convention on transnational organized criminality, which is amended with two memorandums: Memorandum of prevention, suppression and punishment of human trafficking, especially women and children, and Memorandum against smuggling of migrants by land, sea or air. The Convention, along with the Memorandums, is used to prevent, investigate and legal prosecution of serious criminal offenses as well as crimes committed by an organized criminal group. The Convention, additionally, apart from the organized criminal groups, also suggests severe ways of punishment for money laundering (especially the kind that has been made by criminal actions), criminal corruption and obstruction of justice. Aside from the confinement, the offenders are likely to be punished by seizure of property, whereas contracting states are obliged to suggest means of confiscation, trace or even seizure of property.

Due to all above, it comes out crystal clear that a constant fight against all sorts (and especially the organized) criminality is more than crucial, as “organized crime (initially, the transnational one) represents a new and modern challenge, risk and threat and that is why it has been identified in strategies of national safety in many countries worldwide”.⁸ Also, “according to numerous authors, the organized criminality also stands for a threat to international peace and stability”.⁹

This paper provides us all with preventive activities and measures that need to be taken in order to put the organized criminality into its reasonable extent and fight it as such.

⁸ Mitar Kovač, *Strategic and doctrinal documents of national safety- theoretical basics*, The world of the book, Belgrade, 2003, p. 131.

⁹ Walter Zalisko, *Russian organized crime: The foundation for trafficking*, Police, Bobit Publishing Company, Redondo Beach, 2000, p. 19.

Preventive activities in the field of crime suppression

Crime suppression includes the usage of all sorts of different methods and measures aimed at preventing any form of criminality.¹⁰ There are, however, different points of view considering this specific topic. While some authors define crime prevention only by the activities aimed at crime suppression done by the public or local community, others, on the other hand, add some activities conducted by the police department as well.¹¹ In addition to this, some other authors do not take positive legislation to be a basis to crime prevention, but only as result of preventive acting of the public, departments and other services, whilst others are of opinion for criminal legislation to be a solid basis for preventive strategy whatsoever.

Bearing all of this in mind, we can point out that “crime prevention suggests using all measures and facilities for mobilization of individuals, social groups, organizations and institutions, aimed at suppressing all actions that are not in accordance to criminal legislation, which can be and, after all, are, by itself, harmful to individuals, social groups or the society in a whole”.¹²

Criminality prevention is characterized by its opponent nature. Moreover, it implies theory as a solution to crime prevention. Given that stopping a criminal activity from happening is the main goal of the prevention, it is more than necessary to fully understand what criminality actually means in theory, that is, to comprehend its etiological and phenomenological aspects. Furthermore, prevention also has its ideological meaning, too, thus it can not be disapproved due to its containing of the “good” and “eligible” elements. And finally, the third aspect of the opponent nature of prevention is contained in its permanent interaction to politics, as politics itself stands for and organized activity of the whole society in regulating social life. So, prevention is a part of the program of different political orientations. The making of prevention strategies and their implementation by far depend on both political activities in a society and political environment altogether.

Preventive crime suppression is based on certain principles, which, when combined, lead to achieving the main criminal political goal — successful crime suppression along with the following of the legal, human, legitimate rules as well as respecting human rights. These principals are: principal of legality (suggest that any activity aimed at crime suppression should be done in accordance to legal standards implied to such activities), legitimacy principle

¹⁰ Vladimir Krivokapić, *Crime prevention*, op. cit., p. 31.

¹¹ Although modern criminology considers police actions to be strictly retroactive, some activities done by the police can be taken as preventive activities.

¹² Vladimir Krivokapić, *Crime prevention*, op. cit., p. 32.

(all limitations of human rights and freedom should be in accordance to implementation of preventive measures and actions, given that repressive measures become illegitimate unless useful, that is, if not effective enough), principle of individualization (it is highly recommended for preventive measures to be taken in order for certain individual needs to be met), principle of humanity (the modern concept of social prevention insists on human, none-repressive measures themselves).

Prevention – repression relation

Criminality is common for both rich and poor countries. Bearing in mind that its acting has had a destructive influence on development and prosperity of various countries, as well as it being not only an internal, but also in international for many years now, it is no surprise that a need from one organized society has occurred in order to fight criminality in many different ways. However, there are two main ways to resist criminality, and they are: repressive and preventive acting.

Repressive acting means post delictum acting of judiciary power and the police, as part of executive power which deals with revealing and proving that criminal actions have been done; all in all, repressive acting is the reaction of one state to criminal in specified cases. Preventive acting, on the other hand, implies a whole series of different political, economical and legal measures, conducted by the state on the national, regional and international levels. Political measures consist of certain activities that can be put down to: keeping a close eye on all social deviations, accordance between national standards and recommendations of the UN, EU, European Council..., technical and staff improvements of legal and police departments, providing quality facilities to improve working conditions in these departments, scientific and other educational institutes, etc. Economical measures are used to adjusting to the economical political situation via social politics instrumentalization and eradication of poverty. Legal measures refer to all three branches of government powers (executive, legislative and judiciary). The Parliament, as the highest instance of legislative power, is in charge of dealing with legislative matters, passing resolutions and directives to the executive power. The government, as the highest instance of the executive power, proposes and enforces the law and by-laws and controls the police. The essence of judiciary, in its preventive aspect, does not only mean criminal prosecution due to proper ways of punishing the offenders, but also a constant promotion of criminal policy as well as interpretation of statutes.

The growth of social awareness and the human aspect of suppressing criminality have influenced the development of prevention as a separate

segment of criminal policy in modern societies, which, along with the repression, makes a whole out of social engagement as far as crime prevention is concerned.¹³

The issue of suppressing organized criminality

It is not fully possible to suppress organized criminality without having a close insight into its main etiological and phenomenological characteristics, as well as numerous other references. Thus, we are constantly alarmed to improving the existing and finding new methods in the field of crime suppression. It is essential for all elements of organized criminality to be taken into consideration so that enabling statutes can be passed that will affect preventive measures to be effectively conducted.

In addition to this, it is more than necessary to have a preventive influence on the causes of criminal activities, which is exactly where etiological aspect comes first. We must not fail to point out the fact that the offenders are in a non-stop seek of making powerful connections to the state and its departments, whereas criminal organizations have a strong financial impact and therefore can influence political decisions and processes, too, elections for governing authorities, etc. Preventive measures need are be directed to eliminating corruption itself, as well as other activities that criminal organizations use in order to get closer to the state.

In modern society, repressive measures are crucial in fighting organized criminality, whereas prevention is only an orientation for a new criminal policy which has lately been put an emphasis on, which is why it is very important to come up with a new and improved reactive approach due to the preventive activities, as they are not supposed to be “a reaction to the criminal action, but need to be a stimulus for acting ahead”.¹⁴ However, the fight against organized criminality is a very complex and long-term process. All measures need to be well-shaped and clearly defined. One of the key factors in an institutional fight against organized criminality is independent, objective, efficient and responsible jurisdictional institutions.

It is generally accepted that all forms of criminality cannot be efficiently suppressed without using an adequate legal mechanism “which best suits the demands of a successful fight against criminality, with the constant abidance of international conventions, as well as the respect of human rights suggested by

¹³ Vladimir Krivokapić, *Crime prevention*, op. cit., p. 44.

¹⁴ Branislav Simonović, *The part of the police in crime prevention on the local community level*, Security no.1/2001, Belgrade, p. 35.

national legislation".¹⁵ Along with this, it is also highly recommended for the importance of preventive activities to be pointed out on the international level.

When it comes to international criminal political level, on the other hand, there has been a need for some national, regional and global preventive measures to be taken. The resolution which has been passed on the sixth congress of the OUN on criminality prevention and the treatment of the offenders suggests some of the material and legal consequences caused by economical and political domination of certain countries of the world. The resolution also contains an appeal and recommendation for to a number of countries on how to organize themselves in order to fight the consequences of criminality and destruction on both national and international levels.¹⁶

Further in the text, we will represent the ways of fighting all manifestation forms of criminality, firstly the organized criminality, in regional countries and countries of former Yugoslavia. By putting together all methods of suppressing of criminal forms and the concept of the planned, that is, strategic documents passed with the goal of bringing the whole process onto the higher, national level which is in accordance to the international standards, we have managed to come up with a parallel among countries. Each country has managed to arrange the aspect of suppressing all forms of criminal manifestation and organized criminality according to its own needs and instruments. We have also come to a conclusion that most countries share the same opinion that, due to all strategic, that is, planned documents based on the modern principals and standards and which regulate certain matters, all activities are being put down to the level of operational acting. Every document gives preventive measures are primal, which is actually the framework of this paper itself. Also, the text will offer analysis of some strategic, that is, planned documents of every country that has pointed its reactions into this direction, as well as other aspects of organization and realization of activities in the field of crime suppression, mainly organized crime suppression.

¹⁵ Stanko Bejatović, *The necessity of passing the Law of Criminal Procedure of the Republic of Serbia*, Journal of criminology and criminal law, no. 1/2004, Belgrade, p. 55.

¹⁶ Dušan Cotić and Vladimir Kambovski, *The Sixth UN Congress on the prevention of criminality and the treatment of the offenders held in Karasko*, JRKK, no. 1/1981.

Primal framework of National strategy in crime suppression in the Republic of Serbia

The primal framework of National strategy in crime suppression¹⁷ in the Republic of Serbia was released in 2009 by the Ministry of Home Affairs of the Republic of Serbia.¹⁸

As pointed out in the introductory part of this publication "... it is more than obvious that well planned strategies of crime prevention are not there only to prevent crime or victimize, but also to promote the safety of a community and make contribution to a sustainable country development. Efficient, responsible crime prevention increases the quality of life of all citizens."

In the first part, the Preamble of the Primal framework offers the future activities concerning the creating of the National strategy of crime prevention, as well as founding of the National Council for crime prevention that will be in charge of all activities on national level. However, one of the sources used for defining of the Primal framework and creating the strategy for crime prevention in other countries was the Guideline for crime prevention by the UN office for drugs and criminal.¹⁹ The Primal framework refers to prevention of criminality containing the elements of violence, drugs, property torts, especially the ones done by underage persons, as well as all other sorts of criminal acts. A definition given by the European network for crime prevention (EUCPN) is also pointed out, according to which crime prevention includes all measures used for suppressing or reducing the number of criminal acts in any other way and dispelling the feeling of guilt with the citizens, either through the direct deterrence from committing crimes, or policy and interventions aimed at reducing the crime potential and its factors. It also includes activities done by the government of the Republic of Serbia, appropriate authorities, criminal law institutions, local authorities, associations of experts, private, volunteering and civil sectors, scientists, public and the media.

The new passage of the first part says that the Primal framework is aimed at stimulating the professional and social dialogue as well as an agreement on the future course of action when crime prevention in the Republic of Serbia is concerned.

¹⁷ The Primal framework of the National strategy for crime prevention, Ministry of Home Affairs of the Republic of Serbia, 2009, ISBN: 978-86-83397-11-2.

¹⁸ The Primal framework of the National strategy for crime prevention was created in cooperation with the Ministry of Home Affairs of the Republic of Serbia, Institute for criminological and social research, Faculty for special education and rehabilitation in Belgrade and the Center for children's rights.

¹⁹ Guidelines for the Prevention of Crime, The Economic and Social Council resolution 2002/13 of 24 July 2002.

The second part of the Primal framework implies the goals of crime prevention in Serbia, as such: the general (reducing crime, increasing the subjects' ability in crime prevention, development of cooperation among all subjects involved in crime prevention) and the specific goals.

The third part points out that the future Strategy should be used as an instrument in engaging numerous partners into improving crime prevention in Serbia.

And finally, the fourth part represents the crime prevention Concept which is suggested by the Primal framework. According to the Concept, "crime prevention is consisted of a number of measures, activities and people involved in it, which altogether bring to realization of goals set in this field of action. There are two levels of actions in this area: crime prevention system and a series of general and specific measures and activities, all directed to crime prevention by the community due to its different ways of organizing and various forms of acting". Both of these elements are explained closely, leading to naming the levels of crime prevention: primal, secondary and tertiary. Due to defining all of the three levels of crime prevention, we can say that all preventive activities basically refer to: the situation (creating an environment inappropriate for making crime), social environment (family, school, peer pressure), a potential offender and an actual offender (control and change of behaviour), potential victim (reducing the possibility of becoming a victim in crime) and cooperation with the citizens, resulting in reacting to crime activities.

The Primal framework of National strategy for crime prevention contains a special enclosure: Situational analysis as a basis for creating the Primal framework, consisting of the following points: analysis of every ongoing situation in the field of crime, as a basis for defining strategic directions and goals; major, well-known reasons for crime activities happening in Serbia; analysis of the existing legal framework; analysis of recent activities done in the area of crime suppression, especially the crime prevention; analysis of past cooperation and partnerships.

National plan for organized crime suppression in the Republic of Croatia

National plan for organized crime suppression in the Republic of Croatia²⁰ in its legal aspect contains all rules of international law, as well as the national legislative of the Republic of Croatia. Due to provisions of the passed stabilization and integration agreement, the Republic of Croatia has largely

²⁰ National plan for fight against the organized criminality 2007-2008, Ministry of Justice of the Republic of Croatia, 2007.

brought its own national criminal legislation in accordance to *aquis communitaire*.

In the part concerning the rate of the present situation in Croatia, it has been concluded that even the most important and the most common forms of the traditional, organized crime can easily lead to illegal migrations, smuggling of drugs, smuggling and illegal sales of weapons, as well as forging, that is, the distribution of the forged money. According to their characteristics, the organized criminal groups in the Republic of Croatia belong to the type of criminal associations that are specialized in one or, sometimes even more, criminal activities. Also, there are such criminal associations with a very fine and flexible internal organization, fields of interest and criminal activities that they are in charge of. Some of the changes in the number of notified crimes have been detected in the Republic of Croatia, meaning that in 2005 the rate has come down to 6,47% less than in 2004. One of the conclusions based on the screening of the situation in Croatia, which is partially a topic of this paper, is the need for implementing and a proper use of the proactive approach at monitoring activities of organized criminal groups, and which represents a basic presumption for a more efficient reveal and suppression of this type of criminality. The end of the third part, however, explains the activities of Special bodies that take part in revealing, reporting and pursuing of the organized criminality: 1.) the Police (department for organized criminality, founded in 1992), 2.) Office for suppression of corruption and organized criminality, 3.) Office for preventing money laundering, 4.) the rest of the governmental bodies (Council for National Security, Council for coordination of security and secret services, Customs service, Exchange inspectorate, Tax administration, etc.).

The fourth part, however, referring to the Plan of specified measures, starts from the fact that it is measures for suppressing organized criminality that determine the what kind of strategic approach will be used in order to fight organized criminality, whereas it's, at the same time, based on the analysis of the state and the directions of acting of the organized criminality in Croatia. The specified measures have a wide range of aims which refer to prevention, strengthening the legislative frameworks, improving the staff and material aspects in bodies responsible for crime suppression and clear defining of their rights and obligations, as well as improving of the whole system of crime persecution. In order to prevent, reveal, successfully repress and persecute the offenders, the police and other governmental and judicial bodies have an everyday obligation of conducting the following measures: 1.) Prevention, 2.) Education, 3.) Development of strategies and regulations, 4.) Money laundering repression, 5.) Deprivation of property rights acquired by making a criminal offense, 6.) Suppression of corruption, 7.) Coordination among the police, certain departments of the Ministry of finance and the National prosecution

service, 8.) Creating of the national data base and protocols for data exchange among the police, certain departments of the Ministry of finance and the National prosecution service, 9.) International and regional cooperation, (9.1) Operational cooperation between the police and other governmental bodies in the field of revealing and repressing of criminality abroad, 9.2) Multilateral and regional cooperation with other judicial bodies of other countries, 9.3) Creating an appropriate atmosphere for conducting investigations together).

And finally, the fifth part is dedicated to the supervision of the way the Plan for specified measures is being conducted.

Strategy for organized crime suppression of Bosnia and Herzegovina

The strategy for organized crime suppression of Bosnia and Herzegovina²¹ is a result of development of national capacities and potentials aimed at an efficient fight against all forms of organized criminality, along with creating an adequate environment for political and legal points that would lead to a successful implementation of the Strategy, based on three main principles: a proactive approach of developing and applying of preventive acting, implementation of preventive acting and deprivation of property acquired by making criminal offenses. The Council of Ministers of Bosnia and Herzegovina uses the Strategy in order to regulate politics and establish an efficient system of organized crime suppression and by which it would identify strategic goals, parts and responsibilities of all subjects involved and set up a framework for plans implementation. Also, the Strategy helps create some of the additional terms for a more effective involvement of Bosnia and Herzegovina in the regional, European and world concept of the fight against organized criminality.

At its very beginning, the Strategy represents the visions, missions and main goals it has been based on, and which are: 1.) The general goals of the Strategy set up for the fight against organized criminality, 2.) Special goals of the Strategy set up for the fight against organized criminality. The Strategy also studies the factors that influence the development of organized criminality, all of which aimed at foreseeing a constant integrated process of measures and methods conducted by all governmental bodies and other subjects relevant for organized crime suppression in Bosnia and Herzegovina.

The following part of the Strategy refers to factors valuable for a conducting a successful fight against organized criminality in Bosnia and Herzegovina and

²¹ Strategy for organized crime suppression of Bosnia and Herzegovina (period from 2009–2012), the Council of Ministers, Sarajevo, 2009.

which are related to a normative legal framework, institutional capacities and the resources of the process itself.

The final regulations of the Strategy, however, deal with the measures used in order to foresee the further acting and development of organized criminality in Bosnia and Herzegovina, as well as valuation of disposable national capacities and possibilities for fighting this phenomenon, and also the steps that need to be taken so that the Strategy is fully implemented. These steps refer to: 1.) passing an Action plan that will consider the measures and both the preventive and repressive forms of fighting the organized criminality, as well as deprivation of property acquired by making criminal offenses, 2.) creating a Work group that develops the Action plan, consisting of bodies' representatives that will take place in conducting the Strategy, as well as all other subjects who show interest in this action.

Program for fight against corruption and organized criminality of the Republic of Montenegro

Program for fight against corruption and organized criminality in the Republic of Montenegro²² has been set up due to program activities of the government of the Republic of Montenegro and cooperation with the NGO sectors. The aim of the program is becoming a part of the general social plan and widely approved system of measures and activities directed to suppression of organized criminality. A long-term aim of this program is, however, restriction of corruption and organized criminality and their consequences which have a destructive impact on the society in global.

At its very beginning, the Program suggests an analysis of the present situation and state in the Republic of Montenegro in the fields of: 1.) corruption and its harmful consequences, 2.) organized criminality and its harmful consequences, all based on research and relevant statistic data.

The fact that determines whether, and to what extent, is the fight against corruption and organized criminality, depends on a number of factors, mainly political will and determination, as well as abidance of international obligation of acting. Namely, political obligation of acting is not an ordinary declaration of one's intention, but also a clear obligation of subjects of political power, which influences responsibility towards citizens. Furthermore, the program for fight against corruption and organized criminality also proposes the abidance of relevant international standards in an organized social phenomenon in this field

²² Program for fight against corruption and organized criminality of the Republic of Montenegro, the Government of the Republic of Montenegro, Ministry of Home Affairs, 2005.

of action. The program itself also defines the general goals of this process that refer to: 1.) an efficient passing of the law as a key factor of legal system stabilization, 2.) development of preventive dimension, that is, working on directing the disposable potentials towards eliminating the causes that affect appearance of corruption and organized criminality, 3.) stimulating the public and civil society to develop a partner relationship with the institutions in charge of preventing corruption; given the fact that police and judicial activities cannot be successful without a public support, it is highly necessary to set up a system of liberal and public media, 4.) enforcement of democratic and industrial reforms, 5.) setting up a new legal system and creating new institutional frameworks in accordance to international legal documents and practice in order to improve the governmental power into a more efficient suppression of corruption and organized criminality.

The program also identifies a series of specific measures used against the corruption and organized criminality in the field of a proper criminal prosecution, passing laws and measures referring to certain controlling institutions, corruption prevention and involvement of the public, civil society and the media.

On the other hand, the final paragraphs of the program have been dedicated to implementation of the program's regulations. Due to this point, a special body has been formed –the Committee of the government of the Republic of Montenegro, which will be in charge of realization and the proper implementation of the program's regulations.

The Action plan of the Interdepartmental work group for the fight against human trafficking of the Republic of Slovenia

The Action plan of the Interdepartmental work group for the fight against human trafficking plays a most important role as a document that influences the realization of legislative provisions in the Republic of Slovenia.²³

The Action plan was initially formed as a proper addition to previous planned documents in this field, given the fact that human trafficking became the center of attention and one of the leading problems in the Republic of Slovenia in 2001.

The Action plan, however, puts an emphasis of prevention, transparency, awakening the public awareness, education and training of technical staff, educational and social institutions. Nevertheless, the Plan offers a series of

²³ Action Plan Interdepartmental Working Group for the Fight against Trafficking in Human Beings for 2010–2011, Government of the Republic of Slovenia.

elements of preventive activities, and they are: 1.) communication activities which aim is to affect the public awareness and informing, 2.) activities concerning the training of public servants whose work is variously connected to different aspects of human trafficking issue, 3.) considering the point of human trafficking in the Regional ministerial Conference in the field of home affairs, so called "The hill process".

However, a special significance has been given to the point of revealing, investigation and prosecution of criminal acts, as well as the international cooperation when carrying out the activities above. Specified phases in this part are: 1.) Revealing and investigation of criminal acts of human trafficking through forming joint investigation teams (JIT) in the Southeast Europe region, 2.) an intense work of the police towards revealing and investigation of criminal acts of human trafficking in the area of sexual exploitation, 3.) an intense work of the police towards revealing and investigation of criminal acts of human trafficking in the area of labour exploitation, 4.) monitoring individual cases of criminal persecution for criminal acts of human trafficking, 5.) monitoring the extent and ways of making criminal offenses directly connected to human trafficking, 6.) improving the controlling mechanisms of work permission delivers.

The Action plan also covers and, at the same time, deals with a very important point of this matter, which is undoubtedly, the help and protection of the victims. The main field of actions in this manner is have been realized via numerous activities, all named together as „a care for the victims of human trafficking“, as well as through the addition of the project.

„The implementation of mechanisms for recognizing, helping and protecting the victims of human trafficking and/or sexual violence in the process of acquiring the international protection in Slovenia (PATS)²⁴ and the process of reintegration of human trafficking victims.

The final chapter of the Action plan represents means of support which contain: identification of system and legal solutions regarding the issue of human trafficking, participation in regional and international organizations in charge of human trafficking suppression and enabling an active participation of the NGO in national and international educational Congresses.

²⁴ Project „Uvajanje mehanizma za prepoznavanje, pomoč in zaščito žrtev trgovine z ljudmi in/ali spolnega nasilja v postopkih priznanja mednarodne zaščite v Sloveniji (PATS)“, Akcijski načrt medresorske Delovne skupine za boj proti trgovini z ljudmi za obdobje 2010–2011, Government of the Republic of Slovenia.

Organizational and legislative regulation of organized crime Manifestation in the Republic of Macedonia

A specific and conspicuous issue in the Republic of Macedonia is, by far, is a rapid increase of organized crime manifestation, named industrial, that is, economical financial criminality.

For years, this issue which manifestation is widely spread and enormously dangerous for a society, has been kept in dark from the eyes of Macedonian public. What's more, this phenomenon has not been even considered by the science of criminal law, let alone from the criminal or criminological aspect.²⁵ During the past several years, however, under the influence of international legal acts and the Contracts Convention, the problem of industrial criminality has been given a certain significance, which it undoubtedly, deserves.

Namely, the reaction to this manifestation of organized criminality consists of two approaches — the preventive and repressive, that is, criminal prosecution for committed crimes. Thus, it should be pointed out that in this manner, there are two means of a direct law enforcement (the Penal Code of the Republic of Macedonia and Law of Criminal Procedure), as well as bodies and institutions that indirectly make contribution to a quality investigation and prevention of industrial criminality.

There are several appropriate authorities in the Republic of Macedonia that are in charge of implementing procedural provisions of the Law of Criminal Procedure as well as substantive provisions of the Penal Code of the Republic of Macedonia, and they are: the Court, Public Prosecution, the Police, Custom Service and Financial Police department, all of which can be considered to be law enforcement agencies in this area. On the other hand, there are certain, but not less important, bodies, departments and institutions that make indirect contribution to crime prosecution, and which are specialized for financial transactions, managing, controlling the use of budgetary funds, etc (i.e. Revenue Department, Head office for preventing money laundering and financing of terrorism, Audit Office of the Republic, The Republican Foreign Inspection, The Republican Trade Inspection, The Republican Labour Inspection) and the State Commission for preventing corruption, as an independent body.

Along with the matters of an appropriate procedural investigation and prosecution of the offenders, the Penal Code of the Republic of Macedonia²⁶

²⁵ See more: Concepts and forms the economic and financial crime, <http://search.conduit.com/Results.aspx?q=POIM++I+POJAVNI+OBLICI+NA+EKONOMSKO++FINASISKIOT+KRIMINAL&hl=en&gil=en-US&SelfSearch=1&SearchType=SearchWeb&SearchSourceOrigin=13&ctid=CT2009787&octid=CT2009787&FollowOn=True> (downloaded: 06/05/2011.)

²⁶ Chapter 25 – Criminal offenses against public finances, payment system and the economy, the Criminal Code of the Republic of Macedonia, Official Gazette of RM, no. 19/04, 268–287.

also regulates, in details, all other actions that could be suitable for criminal culpability in any possible way. In addition to this, 22 criminal acts have been regulated in this field of interest.

Conclusion

When we talk about the process of resisting different forms of criminality and therefore reducing them to a reasonable extent in the Republic of Serbia, it is more than necessary to take an appropriate approach to this matter, as the fight against criminality needs to be constant and smartly conceived. That implies not only the realization of repressive actions, but also creation of a strategy that would contain a certain preventive activity.

However, it is these preventive activities that have been given a very important role in the field of crime suppression, as, given the fact that the reactive approach, aimed at a criminal act itself, has proven to be inefficient enough in prevention of making criminal offenses. Also, the researches have shown that putting an emphasis on revealing of the committed crimes only and their offenders, has a limited effect on reducing the crime rate.

In 2009, the Ministry of Home Affairs of the Republic of Serbia published the Primal framework of the National strategy for crime prevention, all in accordance to comprehension of the importance of preventive activities in the field of criminality.

Such process of fight against criminality development will inevitably lead to a high level of citizens' respect and trust in institutions that are in charge of this matter. Bearing that in mind, it is essential to improve the institutions closely involved in fight against the organized criminality, improving the legal framework of action, international cooperation as well as human resources in this area.

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Environmental Security and Protection in European Union and Republic of Serbia

ABSTRACT

Taking as a starting point some methodological dilemmas the paper points to the general frameworks of the European Union's (EU) security policy concerning the position and role the environmental field plays in the EU policy and regulations. It is pointed out to the place environmental problems take in the foreign and security policy. The basic elements of the EU environmental policy and regulations which are significant are for security are especially analysed and these are as follows: industrial pollution control and risk management, nuclear security and radioactive waste, chemicals management, waste management, air protection, water resources management, nature protection, noise protection, etc. In the last part of the article, the authors point to the place and significance of the environment in the security policy of the Republic of Serbia (RS) especially within the context of harmonisation of national legislations with EU laws. The fundamental thesis that is being proven in the paper is that environmental problems take their normatively defined position in the security policy and they have been quite precisely built neither in the security policy of EU nor in the security policy of the Republic of Serbia.

Key words: environment, Treaty on the European Union, Treaty on the Functioning of the European Union, EU regulations, environmental security, security policy, RS regulations, National Security Strategy.

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Introduction

Although it seems that the relationships between security problems and the state of the environment are “natural” and that for the most part they come from the nature of environmental problems and their connections with various risks and challenges a detailed elaboration of these issues by taking EU and the Republic of Serbia as examples (within the context of EU integrations) implies that several methodological remarks should be made first. A general question would be what the notion of security generally embraces from the aspect of EU and RS (authorities, goals, principles, etc.) and especially within the context of contemporary environmental problems, or actually what all new elements are included in the notion of security within the context of the discussion on contemporary environmental problems. Depending on the contents and accurateness of the answer to this question, the research could go in various directions opening numerous other questions. Regarding this, there is another general question on what the notion of “environment” embraces within the context of contemporary security challenges.² In any case, the starting material determinant of the further debate is established by the state of the environment that is presented in various documents of EU and RS assuming the obligation to take into regard the regional characteristics of the environments as well as the assessments on the state of environment in the world as a whole.³ The reports on the conditions in particular areas or on the mutual impact of various environmental factors on the living world, health and/or the environment as a whole be can be of special importance.⁴ Overlapping of the “national” security and the regional and global security have its special dimensions that can be seen by perceiving the impact of the state of the environment on the

² The authors do not elaborate in detail this question, but since it is significant for this subject, one should keep in mind the fact that of one of the basic characteristics of all (or most) valid international and national definitions of the notion of environment is exceptional broadness of various elements this formulation embraces.

³ See, for example: *Europe's environment — An Assessment of Assessments*, Luxembourg, 2011. <http://www.eea.europa.eu/publications/europes-environment-aoa>. *Europe's Environment – the fourth assessment*, European Environment Agency, Copenhagen, 2007; *Global Environment Outlook, GEO environment for development 4*. UNEP, 2007. http://www.unep.org/geo/GEO4/report/GEO-4_Report_Full_en.pdf. As for the South East European region see, for example: *Environmental trends and perspectives in the Western Balkans: future productions and consumption patterns*. EEA Report, No. 1/2010, Copenhagen, 2010. Todić, D. Social and Environmental Issues Related to the Security in SEE Countries, in Montini, M., Bogdanovic, S., (ed) *Environmental Security in South – Eastern Europe*, Springer Science + Business Media B.V. 2011, pp. 43-58. See also *Izveštaj o stanju životne sredine u 2010. godini*, Ministarstvo životne sredine, rudarstva i prostornog planiranja, Agencija za zaštitu životne sredine, Beograd, 2011. http://www.sepa.gov.rs/download/Izvestaj_o_stanju_zivotne_sredine_za_2010_godinu.pdf.

⁴ See, for example: *Climate change and its possible security implications*, (2009). Report of the Secretary-General, United Nations, General Assembly, A/64/350, 11 September <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/509/46/PDF/N0950946.pdf?>

contemporary life, although a more detailed analysis implies clearer definitions of both value and cognitive elements contained in the notion of “environmental security”.

Considering from the normative aspect one of the first questions relates to what (security) criteria should be applied to determine the relevance of some regulations. One of the questions whose answer could direct us more immediately to security aspects of environmental problems, too, is what the subject of protection of some regulations is, since it is not insignificant for this subject, or actually what the relationship is between the subject of protection and the source of endangerment.⁵ If in a general analysis one assumes the position that the basic subject of environmental protection as a whole and health are the most defined general subject of the protection, then it is very difficult to precisely define the list of potentially relevant regulations.⁶ The starting point of such an approach is logically based on the nature of rights, which in the predominant version of interpretation is the system of norms regulating relations between people, but not excluding numerous problems arising in the attempts to define the relationships between those notions.⁷ The significance of a more

OpenElement. *Using scenarios to improve understanding of environment and security issues*, EEA, 2012. <http://www.eea.europa.eu/publications/using-scenarios-brochure-2012>. *Water resources in Europe in the context of vulnerability*, EEA Report No 11/2012. Copenhagen, 2012. <http://www.eea.europa.eu/publications/water-resources-and-vulnerability>. *The impacts of invasive alien species in Europe*, Technical report No 16/2012. EEA, 2012. <http://www.eea.europa.eu/publications/impacts-of-invasive-alien-species>, etc.

⁵ In defining the subject of protection (and by all this, also by the broader values the society protects) normative instruments mostly show the tendency to keep precision simultaneously leaving open a possibility to also embrace within a broader context some similar circumstances or values including listing of potential sources of endangerment (most often punitive provisions or authorities of the institutes that are in charge of supervision, etc.) However, as such a level of precision often depends on numerous external factors the real ranges of some solutions can be perceived only in practice.

⁶ See, for example: Prüss-Üstün, Annette. *Preventing disease through healthy environments. Towards an estimate of the environmental burden of disease*. WHO, 2006. http://www.who.int/quantifying_ehimpacts/publications/preventingdisease.pdf. pp. 20–25. In a normative sense, the most recognisable aspect of these relations is contained in a part of the constitution and regulations of some states formulating the right to healthy environment and some related rights. However, there are various issues that should be regulated beforehand and they are as follows: quality of the environment that is being protected, quality of health, holder or titulary of some rights, etc. Then, there is also the question on whose health this concerns and whether it is the health of all living organisms on some location or on the Earth as a whole, etc. Besides, in a detailed analysis one should also add more particular subjects of protection such as nature, water resources, biodiversity, etc.

⁷ See, for example: Prüss-Üstün, Annette. *Preventing disease through healthy environments. Towards an estimate of the environmental burden of disease*. WHO, 2006. http://www.who.int/quantifying_ehimpacts/publications/preventingdisease.pdf. pp. 20–25.

precisely defined subject of protection lies in the fact that it direct us to potential sources of endangerment whose visibility can be obvious in particular norms, but it can also be pretty hidden. Only a detailed analysis of a particular regulation, including its punitive part and parts on institutional mechanisms or the whole system that is being established by a regulation can bring out elements upon which some conclusions can be drawn on potential sources of endangerment of security the legislator bore or could bear in mind at the moment of writing the legislation.⁸ Besides, the specific features of some big law systems, such as the EU law system, may make create conditions for taking a more pronounced approach or minimisation of some elements that are important for the relationships between the environment and security.

Environment in EU Foreign and Security Policy

Numerous ways and criteria can be applied to judge the relevance of the policy and regulations in the environmental field for the foreign and security policy. The broadest framework for considering the place of the environment in the EU foreign and security policy is determined by the general place and role the environment plays in the EU policy.⁹ If narrower criteria are applied, then normative elements which are relevant for the foreign and security policy could be determined, above all, by the EU regulations on international obligations concerning the environment or that could be derived from a broader interpretation of the significance of some environmental issues for security as a whole. However, the list of EU regulations which belong to the group that is denoted as regulations in the field of “the EU foreign and security policy” totally embrace 535 various acts, but among them, there are no regulations that explicitly relate to the environment.¹⁰

However, considering in a strictly normative way and regarding the provisions of the Treaty on the European Union, among the elements that define the EU

⁸ In contemporary analyses this „value“ part of a norm is often totally ignored by simplifying the relationships between security and the environment by reducing them to elementary manifestations of behaviour that is opposite to the prescribed norms. By all this, it is forgotten that various ethic trends in the contemporary environmental policy can decisively influence the creation, interpretation and implementation of a norm, especially in some borderline cases.

⁹ For more see: Dragoljub Todić, *Vodiči kroz EU politike – Životna sredina*, Evropski pokret u Srbiji, Beograd, 2011.

¹⁰ On 19.12.2012. See: http://eur-lex.europa.eu/en/legis/latest/chap_18.pdf. All regulations in this field are divided to several subgroups and they are as follows: foreign relations, humanitarian assistance, foreign trade, development and co-operation, human rights and democracy and fight against organised crime.

foreign and security policy the environment seems to have, in a way, a specific meaning. Of course, by all this, one should first recognise that in the Chapter VI of the Treaty on EU in the part on the EU foreign and security policy (Art. 21–46) the environment is explicitly mentioned only in Art. 21.¹¹ This has been done within the context of defining and implementing the common policy and measures attempting to achieve a high degree of co-operation in all fields of international relations so that the Union could, among other things, do the following: encourage sustainable economic and social development and environmental protection in developing countries, whose primary goals are to eradicate poverty (point d); or actually, assist in the development of international measures for the preservation and improvement of the quality of the environment and sustainable management of world natural resources for the purpose of ensuring sustainable development (point f). Thus, the global aspirations of the EU environmental policy are extended from the objectives concerning developing countries to “management of world natural resources” as a whole, too.¹² In this way, the debate on the place of environmental problems within the security context is extended to general problems of international security or actually, to global environmental problems as a whole. In the outcome document from the conference in Rio de Janeiro in 2012 “The Future We Want” it is especially pointed to several most important environmental problems and they also include the following: climate change, biodiversity protection, forests, desertification and loss of soil fertility, chemicals and waste management, etc.¹³

The discussion on foreign and security aspects of the EU policy that is significant for the environmental field leads us to the need to point to some other vital elements of the policy of this organisation in this field such as objectives, competences, principles, etc. Although concerning the objectives of the EU environmental policy one should take into consideration the overall goals of this

¹¹ Article 205 of the Treaty on the Functioning of the European Union prescribes that the Union’s acting on the international scene is carried out in accordance with general provisions defined in the Title I of the Chapter V of the Treaty on EU (general provisions on the Union’s acting on the international scene).

¹² The connections with global environmental problems and challenges resulting from them are perhaps best seen in the EU objectives defined in the EU Sixth Environment Action Programme. By all this, one should keep in mind that in the last several years the EU policy has strongly pointed out to the problems of climate change and security challenges resulting from these problems. In addition, the Sixth Environment Action Programme separately elaborates the EU measures concerning, among other thing, nature and biodiversity protection, health and quality of life protection, sustainable use and management of natural resources and waste, etc.

¹³ *The Future We Want: Outcome document adopted at Rio+20*, A/CONF.216/L.1. 19 June 2012. <http://www.uncsd2012.org/content/documents/727The%20Future%20We%20Want%2019%20June%201230pm.pdf>.

organisation. However, the objectives that are most explicitly formulated in the environmental field are contained in the provision of Article 191 of the Treaty on the Functioning of EU (previously Article 174, that is 130r). This provision prescribes that the Union environmental policy should contribute to achieving the aims concerning the preservation, protection and improvement of the quality of the environment, protection of human health, careful and rational use of natural resources and improvement and measures for facing global environmental problems at the international level. Therefore, the goal of the Community environmental policy is to ensure a high degree of protection taking care of versatile conditions and various regions in the Community. It is based on particular principles among which are some that are directly related to security aspects of the policy as a whole such as the precautionary principle, preventive action principle and that the environmental damage should be repaired at the source of pollution.¹⁴

Keeping in mind all that has been mentioned above, it seems that it is most advisable to perceive the general frameworks of the EU environmental policy (from the normative aspect) through some groups of regulations in the environmental field also taking into consideration other fields which are relevant for the environment.

¹⁴ This should be added the polluter pays principle as one of four principles which are explicitly mentioned in Article 191 of the Treaty on the Functioning of EU. Apart from those four principles, there are also some other principles of environmental protection in EU and they are as follows: principle of sustainable development, principle of subsidiarity, principle of proportionality, principle of information dissemination and participation of the public. Čavoški, A., *Osnovi ekološkog prava Evropske unije*, Pravni fakultet Univerziteta Union, Službeni glasnik, Beograd, 2007, str. 14–22. Principles of international environmental law embraced, apart from those mentioned above, the principle of sovereignty over natural resources, obligation not to cause damage, principle of common but differentiated responsibilities, principle of fair share in the use of resources, etc. Louka, E., *International Environmental Law*, Cambridge University Press, 2006. p. 49–54. Dragoljub Todić, *Savremena politika i pravo životne sredine*, Megatrend univerzitet, Beograd. 2008. str. 59–64.

¹⁵ We should remind that all sources of EU environmental law are arranged by groups in the following way: horizontal legislation, nuclear security and radioactive waste, water protection and management, industrial risks, biotechnologies, preservation of wild fauna and flora, waste management and clean technologies, civil protection and international co-operation. See. <http://eur-lex.europa.eu/en/legis/latest/chap1510.htm>. See also: *Nacionalni program za integraciju u Evropsku uniju (NPI)*, Vlada, Beograd, juni 2008. str. 619–676; *NPI-ID*, op. cit. str. 571–600.

Some of the Most Important Fields and Groups of EU Regulations which are Relevant for Security

The significance of some fields and groups of EU regulations for the discussion of security aspects of the EU policy can be assessed in various ways, but starting from a broad definition of the notion of “environment” and its “natural” connection with security problems (as mentioned in the introduction) it can be said that all groups of regulations have some significance.¹⁵ Since the choice of the most important fields and groups of EU regulations (based on various criteria) could be objected in various ways assuming the risk that it takes, we opt for a general presentation of bigger groups leaving the possibility to discuss in detail and separately any groups of regulations as well as any individual regulation within any group.

It is considered that the so-called Seveso disaster in 1976 (Italy) in a chemical manufacturing plant for the production of pesticides and herbicides made an impact on the development of the EU policy and legislation in the field of prevention and control of industrial pollution and risk management.¹⁶ Since then up to the present days, many versatile activities have been taken and a large number of documents have been adopted defining various instruments with the goals to create conditions for the prevention and reduction of negative impacts the industry may exert on the environment.¹⁷

Concern over possible impacts of GMO¹⁸ on the environment and health has arisen recently comparing to the initiatives that regarded chemicals. In the 1970s, the first signs of concern appeared, which employees and scientists in some research laboratories initiated, above all. Under today’s conditions, the most significant activities directed towards taking measures for risk control are supported by various NGOs in the environmental field and in the field of consumer protection. Today, it is regarded that some questions concerning GMO (such as intentional emission of GMOs in the environment, GM food and genetically modified animals) are considerably politicised unlike the application of biotechnologies to medical purposes.¹⁹

¹⁶ For more see: <http://ec.europa.eu/environment/seveso/index.htm>.

¹⁷ This group of regulations (together with the regulations on GMO) and regulations on chemicals embrace totally 116 acts (up to 20.12.2012). See: <http://eur-lex.europa.eu/en/legis/latest/chap15102050.htm>.

¹⁸ Regarding genetically modified organisms, one should keep in mind that regulations in this field considerably belong to the group of regulations on agriculture and to the group of regulations on the protection of consumers.

¹⁹ *Handbook on the Implementation of EC Environmental Legislation*, Regional Environmental Center, Umweltbundesamt GmbH, Budapest, 2008. p. 921.

Growth in the use of chemicals in a larger part of developed societies has resulted, among other things, in increasing concern over their possible health and environment consequences. Some chemicals that the man has created can be found even in the most distant places in the environment, in animals and human beings. With the increased knowledge on possible negative effects of chemicals, one of the first questions that was raised referred to the need of providing sufficient information on some chemicals. The Preamble of the Sixth Environment Action Programme of the European Union points to the connections between some health problems and the state of chemicals management recognising that it is necessary to considerably improve knowledge and information dissemination (Points 24, 25 and 26).²⁰ The Thematic Strategy on the Sustainable Use of Pesticides (2006) (COM(2006)372²¹ perceives the present situation defining the directions in further action with the purpose of reducing the risk of the use of pesticides to human health and the environment. At the same time, the objective is to keep the already achieved level of productivity in crops production and improvement in the use and distribution control.²²

Air quality is of the issues to which a considerable part of EU citizens devotes their greatest attention and it is one of the fields where EU is the most active. It is considered that the problems of air pollution have played a significant role in the EU policy and legislation since the 1980s as a reaction to the issue initiated by the adoption and ratification (on the part of the Community) of the Convention on Long-Range Transboundary Air Pollution (1979). After that, the first directive in this field was adopted and it concerned sulfur dioxide.²³ Then, in this field, the following subjects were also regulated: acid rains, fight against air pollution by determining limit values for emission of polluting substances as well as limiting emissions of substances from big burning power plants. Later, the most prominent was the development of legislation in the field of ozone layer protection, limiting of carbon dioxide emissions and forests damage by air pollution.

²⁰ For more on various aspects of EU activities in the field of chemicals see the site of the European Chemicals Agency: <http://echa.europa.eu/>

²¹ *A Thematic Strategy on the Sustainable Use of Pesticides, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Brussels, 12.7.2006, COM(2006) 372 final*, http://ec.europa.eu/environment/ppps/pdf/com_2006_0372.pdf. (7.6.2010)

²² For more on the state and EU sustainable pesticides management policy see: <http://ec.europa.eu/environment/ppps/home.htm>

²³ The first issue that has been the subject of regulation in the field of air protection is Council Directive(80/779/EEC) of 15 July 1980 on air quality limit values and guide values for sulphur dioxide and suspended particulates..

Regardless of the fact that it is assessed that as a result of the measures that have been taken a step forward has been made in the elimination of problems concerning some polluting substances in the air (sulfur dioxide, lead, nitrogen oxides, carbon monoxide, benzene, etc.), air quality has remained one of serious problems (summer smog coming from ground level ozone layer, suspended particulates). For this reason, it is regarded necessary to keep taking measures at various levels (local, national, European, international). Thematic Strategy on Air Pollution²⁴ as an EU key strategic document in this field defines the goals for reduction of some polluting substances and points out the significance of legislative regulation in the fight against pollution in the following two elementary ways: by the improvement of legislation in the environmental field and through the integration of the air quality issue in relevant policies.

Water management and protection is the issue that is regarded as the one that has been regulated within the EU environment legislation in the broadest way. The water protection policy in EU had started in the 1970s, this also including the adoption of 1973 First Action Programme. After that, in 1975 the adoption of the Directive on the Protection of Groundwater and in 1980 of the Drinking Water Directive followed. This first wave of legislations in the field of waters also includes the legislations defining water quality standards (bathing water standards, water quality requirements of fish, crustacea, groundwater standards, etc.). The Directive on Emission Limit Values was adopted (1976) as well as other directives (daughter) regulating emission limit values for various substances.²⁵

The latest approach in water protection assumes the positions that efficient water protection requires the adoption of adequate legislations regulating emission limits, this at the same including legislations on water quality standards (actually, it assumes the position on the necessity to take the so-called combined approach). The water policy priorities are defined in the EC Sixth Action Programme in the way

²⁴ *Communication from the Commission to the Council and the European Parliament – Thematic Strategy on air pollution {SEC(2005) 1132} {SEC(2005) 1133}, /* COM/2005/0446 final */*, Brussels, 21.09.2005. The Strategy is one of a few strategies whose elaboration was provided by the Sixth Environment Action Programme and the first one that was adopted by the Commission. It was founded on the research carried out within CAFE Programme (Clear Air for Europe) and some other programmes. See also: *Commission communication of 4 May 2001 “The Clean Air for Europe (CAFE) Programme: Towards a Thematic Strategy for Air Quality”*.

²⁵ The second wave of adoption of legislations in the field of water protection had been followed by the adoption of the Urban Waste Water Directive (1991) and the Nitrates Directive. Then followed the revision of the Directives on Drinking and Bathing Water, the development of Underground Action Programme and submitting of the Proposal of the Directive on Environmental Water Standards (1994). The adoption of the Integrated Pollution Prevention and Control Directive (IPPC) (1996) was a significant contribution to the development of the conditions in the field of water.

that the water field is mentioned within priority activities concerning the following issues: a) climate change (preparation of measures for the adaptation to climate change), Article 5.3 — urging of regional climate modelling and assessment for the preparation of regional measures for the adaptation such as water resources management, biodiversity preservation, desertification, floods prevention and support to strengthening of consciousness and citizens and the business sector; b) health and life quality, Article 7.1.6. — raising of the level of quality of groundwater and surface water; Article 7.2.e — sustainable use and high level of water quality; 7.2.h; c) sustainable natural resources and waste use and management, Article 8.1.3, Article 8.2.(i)d — promoting of extraction and production methods and techniques of improvement of efficient and sustainable use of raw materials, energy, waters and other resources.

Nuclear security and radioactive waste management is one of delicate issues of the environmental policy (or the one concerning the environment). The controversy of this issue develops a debate on the place and role of nuclear energy and energy policy as a whole.²⁶

The basic legal framework for acting in this field was defined by the Treaty Establishing the European Atomic Energy Community (Rome, 25 March 1957).²⁷ It regulates the issues related to radiological protection of employees and the public, supply of uranium for the development of nuclear sector and supply of nuclear fission products (e.g. the prevention to be used for unauthorised military purposes), general aspects such as research, information dissemination, investments, the role of some Community bodies, etc. Based on

²⁴ *Communication from the Commission to the Council and the European Parliament - Thematic Strategy on air pollution* {SEC(2005) 1132} {SEC(2005) 1133}, /* COM/2005/0446 final */, Brussels, 21.09.2005. The Strategy is one of a few strategies whose elaboration was provided by the Sixth Environment Action Programme and the first one that was adopted by the Commission. It was founded on the research carried out within CAFE Programme (Clear Air for Europe) and some other programmes. See also: *Commission communication of 4 May 2001 "The Clean Air for Europe (CAFE) Programme: Towards a Thematic Strategy for Air Quality"*.

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²⁶ More than a half of citizens in Europe think that nuclear energy risk is bigger than its benefits as a source of energy. *Europeans and Nuclear Safety*, Special Eurobarometer 271, European Commission, 2007, p. 17.

²⁷ Consolidated version of the Treaty Establishing the European Atomic Energy Community, OJ C 841, 30.3.2010, p. 1–112. See also: http://ec.europa.eu/energy/nuclear/euratom/euratom_en.htm.

this Treaty the European Commission has acquired supranational powers in the following three fields: radiological protection, supply of nuclear fission products and nuclear security.²⁸

The connections between the policy and regulations in the field of waste management and security are mostly related to health protection of the population, especially within the context of hazardous waste management. The basic elements of the EU waste management policy are defined in relevant provisions of the part relating to the environment within the Treaty on the Functioning of the European Union, The Sixth Environment Action Programme and the Thematic Strategy on the Waste Prevention and Recycling. The Thematic Strategy on the Waste Prevention and Recycling was adopted on 21 December 2005 with the aim to perceive and assess the EU waste policy, to make simpler and clear the existing legal framework, to define goals and basic instruments by which it will improve waste management and reduce its generation.²⁹ In accordance with this, it was proposed, among other things, the following: further improvement of the Framework Waste Directive (2006/12/EC), inclusion of the approach based on “life cycle” in EU regulations, defining of minimum standards for implementing activities in the field of recycling, search for new methods to speed up recycling, urging of redirecting of biological waste from waste piles and revision of the Directive on Sewage Sludge (86/278/EC).

It is estimated that a large number inhabitants of Europe are exposed to negative effects of noise in the environment which comes from various sources (traffic, industry, recreation activities, etc.).³⁰ For this reason noise is one of the main local environmental problems producing significant effects on the health of inhabitants.³¹

²⁸ Actually, several international bodies and organisation are involved in the activities in managing radioactive waste safely in EU. Especially important are The International Commission on Radiological Protection, the International Atomic Energy Agency, the OECD Nuclear Energy Agency. The general principles for radioactive waste management defined in „Foundations of Security“ of the International Atomic Energy Agency, which are also called 9 „commands“ embrace the following goals: human health protection, environmental protection, cross-border protection, protecting future generations, burdening future generations, national legal framework, radioactive waste production control, interdependence of radioactive waste production plan management and security.

²⁹ However, for the nature of the problem of waste management one should also take into consideration thematic strategies in other fields such as the following: The Thematic Strategy for Soil Protection, the Thematic Strategy on the Sustainable Use of Resources, the Thematic Strategy on Air Pollution, the Thematic Strategy on the Urban Environment, etc.

³⁰ It is estimated that about 20 per cent of inhabitants in Western Europe is exposed to negative effects of noise that are regarded as unacceptable from the aspect of health. *Commission of the European Communities. (1996). Future noise policy – European Commission Green paper, COM (96) 540 Final, Brussels, 04.11.1996. p. 1.* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1996:0540:FIN:EN:PDF> (22.07.2010).

In its Green Book (1996) the European Commission explicitly defined noise problems as environmental problems, thus opening a debate on noise policy and further measures that should be taken. The following two directions of acting have been defined: general noise policy (common methods for assessment of exposure to noise, establishment of a common index of exposure to noise, limitation of noise transfer, exchange of information and experiences, improvement of coherence of the noise research programme and reduction of emission at the source (road, railway and air traffic and noise caused by equipment in the open area). The most important part of the EU policy in this field is directed toward noise reduction by introducing required technical standards for products, or actually by defining limit values of emission for some products (motor vehicles, motorcycles, airplanes, household appliances, various equipment, etc.). The Article 7, p. 1 of the Sixth Community Environment Action Programme relates to the reduction of people who are exposed to more than average levels of noise for a long period, and especially to traffic noise.³²

Normative Frameworks of Security and Environmental Protection in the Republic of Serbia

The place and role of the “environment” in the security policy of the Republic of Serbia are defined in a general way in several strategic documents, while the relevance of individual legislations should be verified individually from case to case. One can regard the determinations of the national security policy those that are contained in the position that the Republic of Serbia “has been determined to develop and improve all security aspects, and especially “environmental”, apart from “human, societal, energy, economic and other contents of integral security of the Republic of Serbia”³³ (underlined by the author). Special significance is given to the creation of

³¹ It is estimated that external costs caused by noise (above all, for traffic) are between 0.2 and 2 per cent of GDP. *Ibid*, p. 1a. Similar is with the European Environment Agency (2007), *Europe's Environment — the fourth assessment*, Copenhagen. p. 66.

³² *Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme*, (OJ L, 242, 10.09.2002), str. 10.

³³ *Strategija nacionalne bezbednosti Republike Srbije*, Vlada Republike Srbije, Beograd, 2009, str. 14. This analysis does not discuss broader dimensions of the security policy including the fact that the National Assembly of the Republic of Serbia adopted the Resolution on the Protection of Sovereignty, Territorial Integrity and Constitutional Order of the Republic of Serbia (26.12.2007, proclaiming „military neutrality of the Republic of Serbia to the existing military alliances until a possible referendum where the final decision would be made (point 6). See: http://www.parlament.rs/content/cir/akta/akta_detalji.asp?Id=360&t=O#. The perception of possible implications of „military neutrality“ on the state of the environment could be a subject of separate research. For more see: Dragoljub Todić, *Bezbednosna politika Republike Srbije u svetlu savremenih problema u oblasti životne sredine*, *Pravo – teorija i praksa*, br. 7–9, jul-septembar 2011, str. 54–70.

conditions for the improvement of human security that points out the protection of economic, environmental, health, political and other security of an individual and the community.³⁴ The starting point upon the solutions from the Strategy are based is that in the field of “global security” ...”security has from the predominantly military sphere expanded also to some other fields, and these are primarily economic, energy, social and environmental ones”.³⁵ Apart from the improvement of education, science, research work, culture and other fields of social life as well as their harmonisation with the European Union’s standards the strategic importance of “environmental protection” has been explicitly defined in the part of the National Security Strategy dealing with “the policies in some other fields of social life”.³⁶

It is estimated that “building and strengthening of a modern and single system of protection and rescue” has special significance for the achievement of internal security.³⁷ The contents of activities and goals in the environmental field which is of relevance for the national security is defined as “the elimination of the consequences caused by the NATO bombardment”³⁸ as well as the protection and preservation of natural resources that can be jeopardised by uncontrolled exploitation”. “Integrated management and natural resources planned exploitation control and ensuring of respect of international conventions on environmental protection” or actually “adoption of international standards in this field” is considered the basic way for the achievement of these goals.

Perceiving of the place and role of the environment in the security policy of the Republic of Serbia implies (comparatively) reliable identification of sources of endangerment of security of the environment³⁹ as both foreign (global, regional) challenges and the environment national risk.

³⁴ The part relating to the „economic policy“ recognises the importance of pre-conditions for the achieving of the reduction of poverty and unemployment rate and a share of the shadow economy in the overall economy of the state and stimulating of the development of small and medium-sized enterprises, continuous investments in agriculture, tourism development and strengthening of institutional and legislative frameworks regarding the environment quality. Ibid, str. 20.

³⁵ Ibid., str. 2, 34.

³⁶ Ibid. str. 25.

³⁷ “By the development of appropriate society capacities for crisis management and organising citizens and by the efficient system of information dissemination conditions are created for achieving of more efficient protection of life, health and property of citizens and for preservation of the environment”, Ibid, str. 23.

³⁸ *The Consequences of NATO bombing for the Environment in FR Yugoslavia*, Federal Ministry for Development, science and the environment, Belgrade, 2000.

³⁹ Concerning this one can also pose the question of perception of the public. According to the results of the CESID (Center for Free Elections and Democracy) research in 2009 among the biggest problems in Serbia, environmental problems and protection are not perceived as being much important; only 3 per cent of the inquired citizens thought that that problem was the biggest: See: <http://www.ekoforum.org/index/vest.asp?VID=3267>.

Global and regional security challenges related to the environment⁴⁰ should be primarily interpreted within the context of overall economic, social, historical, etc. specific characteristics of the Republic of Serbia and the states of the South East European region to which it belongs. This also includes the consequences of the armed conflicts in the 1990s and the NATO bombardment in 1999. In fact, one should keep in mind the fact that these are “small”⁴¹ economies, whose level of mutual co-operation is very low, while the level of co-operation with EU is much higher,⁴² where dominant economic problems involve a high level of unemployment, a considerable level of trade disbalance, growth of external debt, big differences in the level of development between some regions and some citizens, a high level of government intervention including subsidies, high a level of “shadow” economy, a considerable part of population living beyond poverty limits, etc. with all its consequences which some of the above mentioned characteristics can have as presumptions and sources for the endangerment of environmental security. During their transition, all West Balkan countries passed or are still passing through the process of privatisation, what has a significant impact, among other things, on the responsibility for environmental damage.⁴³ A special problem is the fact that the economies in the region are mostly based on agriculture, exploitation of natural resources and industry, what altogether considerably contributes to irrational exploitation of natural resources and environmental pollution.⁴⁴ Unsustainable production and consumption patterns of the West Balkan countries produce

⁴⁰ For more see: For more see: Todić, D., *Bezbednosna politika Republike Srbije u svetlu savremenih problema u oblasti životne sredine, Pravo – teorija i praksa*, br. 7-9, jul-septembar 2011, str. 54–70.

⁴¹ *Europe's Environment, Forth Assessment*, European Environment Agency, Copenhagen, 2007. p. 390.

⁴² Koyama, Y., *South Eastern Europe in Transition, A Quest for Stabilization of the Region after the Breakup of the Former Yugoslavia*, Japan: Niigata University, 2003, p. 185–187. Regardless of its goals, it seems that the CEFTA Agreement (2006) has not significantly changed the situation in this field.

⁴³ It has been generally perceived that corruption in privatisation has made a significant impact on the current and future state of the environment in the region or actually on the achievement of goals of environmental protection on the part of privatised companies. The public negatively perceives the private sector and the attitude of privatised companies to the environment, which are regarded as achieving their profit goals largely on the account of the goals set in the environmental field. *Gallup Balkan Monitor Insights and Perceptions: Voices of the Balkans - 2009 Summary of Findings*, in Partnership with the European Fund for the Balkans. http://www.balkan-monitor.eu/files/Balkan_Monitor-2009_Summary_of_Findings.pdf Accessed 20 November 2009. p. 8. See also in: *Environmental Policy in South Eastern Europe*, UNDP, Belgrade, 2007. p. 78. As for weaknesses of the states as a security threat, see: Kostovicova, D., *Slabosti države na zapadnom Balkanu kao pretnja bezbednosti: pristup Evropske unije i globalna perspektiva, Bezbednost zapadnog Balkana*, br. 7–8/2008, str. 10–16.

⁴⁴ However, it is still believed that significant advantages of the states in the region are, apart from human resources, just natural resources (forests, biodiversity, mineral resources, waters, etc.). *Environmental Policy in South Eastern Europe*, UNDP, Belgrade, 2007. p. 19.

significant consequences on the current state of the environment and the prospects for resolving of these issues.⁴⁵

Although in the assessments of the state of the environment various documents identify versatile challenges some states in region are facing,⁴⁶ the national reports on achieving of millennium goals in South Eastern Europe particularly point out to the issues related to air and water pollution or actually to the state of the environment of the protected areas.⁴⁷ The most important risks in the environmental field, which are related to the health of the people in the region, are air and water pollution, inadequate waste, chemicals and wastewater management as well as inappropriate professional security and traffic security.⁴⁸ The region is exposed to pollution due to activities of the heavy industry, functioning of the ore sector, intensive agriculture with no realistic assessment of the impact on human health, the lack of infrastructure in the water field, etc.⁴⁹ Also, the region is exposed to a big impact of natural disasters such as earthquakes, floods, fires, droughts, landslides, etc.⁵⁰

⁴⁵ For more see: *Environmental trends and perspectives in the Western Balkans: future productions and consumption patterns*, Copenhagen, EEA Report, No. 1/2010.

⁴⁶ See, for example: *Albania – Environmental Performance Review*, Economic Commission for Europe, Committee on Environmental Policy, New York and Geneva, 2002; *Bosnia and Herzegovina – Environmental Performance Review*, Economic Commission for Europe, Committee on Environmental Policy, New York and Geneva, 2004; *Bosnia and Herzegovina – Depleted Uranium in Bosnia and Herzegovina*, Post Conflict Environmental Assessment, UNEP, Nairobi, 2002; *Croatia – Environmental Performance Review*, Economic Commission for Europe, Committee on Environmental Policy, New York and Geneva, 1999; *Montenegro – Environmental Performance Review*, Economic Commission for Europe, Committee on Environmental Policy, New York and Geneva, 2007; *Serbia – Environmental Performance Review*, Economic Commission for Europe, Committee on Environmental Policy, New York and Geneva, 2007; *Serbia and Montenegro – Depleted Uranium in Serbia and Montenegro, Post-Conflict environmental assessment in the Federal Republic of Yugoslavia*, UNEP, Nairobi, 2002; *Serbia and Montenegro – From Conflict to Sustainable Development: Assessment and Clean-up in Serbia and Montenegro*, UNEP, Nairobi, 2004; *Yugoslavia – The Consequences of NATO bombing for the Environment in FR Yugoslavia*, Federal Ministry for Development, science and the environment, Belgrade, 2000; *Yugoslavia – Environmental Performance Review*, Economic Commission for Europe, Committee on Environmental Policy, New York and Geneva, 2003; *Kosovo under UNSCR 1244/99 – The Kosovo Conflict – Consequences for the Environment and Human Settlements*, UNEP, Nairobi, 1999.

⁴⁷ *National Millennium Development Goals: a framework for action – Europe and the CIS*, Regional MDG Report, UNDP, Bratislava, 2006, p. 49.

⁴⁸ For more see: *Environment and Security Consultations in South Eastern Europe*, Skopje, The Former Yugoslav Republic of Macedonia, 23-24. September 2004, UNEP, UNDP, OSCE, NATO Final Report. <http://www.envsec.org/see/pub/Final%20Report%20from%20the%20EnvSec%20Consultations%20in%20SEE.pdf>. Accessed 15 November 2009. *Europe's Environment, Forth Assessment*, European Environment Agency. Copenhagen, 2007. p. 118.

⁴⁹ *Environment and Security-Transforming Risks into Cooperation, The Case of Central Asia and South Eastern Europe*, UNEP, UNDP, OSCE. 2003, p. 16.

⁵⁰ For more see: *South Eastern Europe Disaster Risk Mitigation and Adaptation Programme* World Bank, ISDR, 2008.

If one takes the broadest approach in defining relevance of some national environmental legislations for the debate on security aspect, what has already been pointed to in the paper, then the complete environmental legislation can be considered in various ways an element of the security system including both goals and instruments and mechanisms of its achievement. The basic characteristic of these legislations is an attempt to harmonise them with EU laws.⁵¹ This being so, regardless of the fact that fundamental environmental legislations are not only determined by “security”, although they contain various provisions which are related to some aspects of security or their basic subjects of regulation are such that concerning them one can say that these are specific security issues.⁵²

Several basic principles in the environmental policy have for their aim, among other things, the prevention or minimisation of harmful effects of some activities on the environment and human health. Therefore, this results in the interpretation that the meaning and contents of these principles can be significant for defining of the nature of the connections between the environment and the security policy. Some of the principles (prevention principle, precautionary principle, principle that damage should be prevented at the source of generation, polluter pay principle, principle of preventing the production (generation) of waste and minimisation of harmful effects of waste, etc.) deserve to be particularly considered, although some other principles can also have some implications on security aspects of various activities in the environmental field.

The level of harmonisation of national legislations of the Republic of Serbia with EU laws can have the character of one of the criteria for the assessment of relevance of these issues from the security aspect.⁵³ This is because, regardless of the fact that due to various specific conditions, the implementation of legislations can considerably prevent one from drawing reliable conclusions. In that sense, it should be kept in mind that it is believed that a part of legislations of the Republic of Serbia, which were adopted in the most recent stage of development, are fully harmonised with relevant EU legislations, while for one part of these legislations this process is under way. If the groups of EU

⁵¹ For an overview of these legislations, see: Vid Vukasović, Dragoljub Todić, *Environmental Law in Serbia*, Kluwer Law International BV, The Netherlands, 2012. pp. 63–348.

⁵² For example: Law on Chemicals, Law on Biocidal Products, Law on Waste Management, Law on Packaging and Packaging Waste, Law on Ionising Radiation Protection and Nuclear Safety, Law on Re-ionising Radiation Protection, Law on Noise Protection in Environment, etc., etc.

⁵³ The policy and legislations relating to security are included in the Charter 31 (foreign, security and defence policy). The environmental field, in its narrowest sense, is the subject of the analyses within the Charter 27.

legislations, to which the authors have pointed to in the first part of the paper, are taken as a parameter, it could be, shortly speaking, recognised that there are several assessments. Thus, concerning the situation included in the Charter 27 of 2012 Report the European Commission recognised that some progress had been made, while there were also some problems. “Alignment with the environmental *acquis* and the ratification of international environmental conventions continued. Significant further efforts are needed in order to implement the national legislation, especially in the areas of water management, industrial pollution control and risk management, nature protection and air quality. The strengthening of the administrative capacity should remain a priority. Little progress was achieved in alignment with the climate *acquis*.”⁵⁴

Conclusion

Although, at first sight, it could be said that the environmental field is connected by many links to various security issues a more detailed research of this relationship implies that various methodological issues should be defined beforehand. Health aspects of environmental problems are mostly used as an “implying” criterion and they have their legal reflection on provisions of various environmental legislations defining those connections explicitly. The width of other issues which are embraced by the corpus of what is being perceived by analysing security aspects of the environment depend on the agreement concerning the definitions of basic notions (environment, security, risks, sources of endangerment, etc.) as well as on the prevailing value judgements of these issues. In a normative sense, the frameworks of the EU security and environmental policy are defined by relevant provisions of the Treaty on the European Union, the Treaty on the Functioning of the European Union as well as by numerous strategic documents of this organisation. However, “environmental” aspects of the EU foreign and security policy can be explicitly seen only in the part that deals with the goals of this organisation concerning developing countries and “management of world natural resources”. Security aspects of the state of some fields of the environment can be judged in detail only through perceiving the EU powers in the environmental field as well through perceiving the subjects that are regulated by some groups of EU legislations.

As far as the state in the Republic of Serbia is concerned, one has the impression that the methodologically consistent perceiving of the relationship between security and the environment can only be achieved by perceiving the

⁵⁴ *Serbia 2012 Progress Report*, European Commission, Brussels, 10.10.2012, SWD(2012) 333, p. 59.

state of national environmental legislations and the level of their harmonisation with EU laws. Although in strategic documents in the field of security environmental problems are marked as relevant for defining security priorities of the country, there are still various questions whose place and significance in such a system should be more precisely defined. Although in the process of harmonisation of national legislations with EU laws in the environmental field even a larger number of matters are yet to be completed, the level of harmonisation and perspectives of this process also produce an impact on the achievement of goals in the field of security.

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Methods of Accomplishing Compatibility of the Western Balkan States Law with the European Law

ABSTRACT

In 2004, the EU started the process of CARDS States acquiring the EU membership by introducing the aviation Law, in order to provide for air traffic safety and security. Paradoxical as it was, it proved to become a good introduction for the incoming process of organizing full EU membership for the CARDS States. At that time compatibility of CARDS States with the European Union Aviation Law was very complex but too important to achieve. It required creating a sustainable organizational and methodological framework for the purpose. At the time, all the CARDS States (Bosnia & Herzegovina, Serbia & Montenegro, Albania, Macedonia), with the exception of Croatia, were far from the European standards and legislature in the field of the Aviation Law. On the other hand, given the security and safety specifics of the aviation law and the specifics of the Western Balkans States at that time, two major issues were to be resolved: first, to provide for organizational and methodological framework for drafting amendments to what was missing in the CARDS States Aviation Law compared to the EU Aviation Law, and second, which turned to be much more complex, to induce the political will of the countries concerned to firmly cooperate with each other.

Introduction

At present the process of Western Balkan States acquiring the EU memberships is pretty much under way. Some of the States have already harmonized their own law with the EU law, have passed the negotiation process and have become the EU members, some have started the negotiation with the EU, and some are still in the stage of achieving their legislation compatibility with the EU law.

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The European Community developed the Program for Community Assistance for Reconstruction, Development and Stabilization (CARDS) in the Western Balkans for the period from 2000 to 2006. One of the projects within the Program was Air Safety and Air Traffic Control Project.

In the end of 2004, the author of this article was kindly asked by EUROCONTROL authorities to prepare a paper on the CARDS project proceedings based on the EUROCONTROL Work Package 2, for its expeditious completion; As a result, *A Proposed Road Map*, an academic approach to the proceedings, and *A Proposed Concept*, an operational approach to the proceedings, i.e. the appropriate Study were prepared. The Study was comprehensive and instrumental in taking practical steps in achieving simultaneous harmonization of Aviation Laws of all the Western Balkans States with the European Aviation Law. This article has summed up the above mentioned Study in order to explain the proposed methods to be applied there, regardless whether or not the Study was strictly followed later on, so that it might be of use as a model in the process of achieving the Western Balkans compatibility with European standards in any other fields of Law. This is the main objective of this article.

The Issue of Cooperation between the CARDS States

The CARDS project was designed to ensure a high level of standards in the domain of air traffic safety and security and to establish cooperation in the field by improving the existing aviation law and the institutional framework of cooperation between the countries in this sensitive and complex region. There were a couple of dilemmas as to how to achieve those objectives, as the Western Balkans characteristics in general, and during that period in particular, required a specific approach.

There was a legal issue originated from the fact that not all of CARDS States were participating in the Stabilization Association Agreement (SAA) at the time, which posed the question whether the EU had proper jurisdiction to prescribe, i. e. to impose, its aviation law upon the CARDS counties that were not participating in SAA, and, therefore, whether a unilateral attempt by the EU to impose safety standards higher than the present national law allowed might be regarded as being beyond its jurisdiction.

A real issue was that the countries concerned might not inclined to cooperate in the domain where they might seem to give up part of their own sovereignty to each other, generally simply because they, as newly established states, valued their newly acquired sovereignty, and, particularly due to their past history, did not like any kind of cooperation that might lead to be seen as formal reintegration. But it was clear that the countries concerned would not feel that

way if any apparent loss of sovereignty were caused by integrating into the EU, as opposed to regional reintegration in terms of cooperation. On the other hand, the EU approach at the time was that of regional harmonization (it might be viewed as a precondition at the moment; later on the EU took the approach of “regatta”) as a step in the process of these States becoming the EU members.

In other words, the CARDS States did not favor cooperation, which they saw as reintegration, but it was also uncertain if they wanted to cooperate on the basis of a formal treaty, despite the fact that it underlines their own sovereignty. As far as aviation safety was concerned, the project required true cooperation, not just nominal one. Hence, the CARDS project had to overcome this impediment.

The Study proposed for the impediment was to be resolved in the following way: 1. Because of all the reasons mentioned above it was suggested that the term “harmonization” had to be replaced by the term “Euro-compatibility”. 2. Whether or not the countries concerned would or wouldn’t like to cooperate with each other, formally or informally, a key way to make them cooperate was to incorporate Euro Packages into their national legislations. In fact, the Single European Sky (SES) package had to be the first one built into their national laws, because it contained mechanisms for cooperation. That way it was politically easier to introduce future cooperation between the CARDS States in the domain that contained elements the States might have never accepted in a treaty; it also left them with a feeling they could always change their own legislation, even though they would not ever think of doing it.

Methods

To simplify the procedures, there had to be special methods to be worked out. The process had to be started in each of the States simultaneously, because working with each State separately would require much more time than was allowed for by the project. Alternatively, the work could start either with one State, in order to create a pilot State and then proceed to work simultaneously with the four other States, or it could start in two States and then be expanded into the three remaining States. The preliminary review of the National Aviation Laws of the CARDS States allowed the conclusion that the Croatia Aviation Law could become the role model for the purpose.

How to determine the missing law elements

The most efficient method to determine which elements were missing in the existing laws of the CARDS countries, compared to the European Aviation Law, was to choose an existing aviation law of one of the EU member States that was

most compatible with the EU Aviation Law. Once the model law was chosen, it was to be compared, for example, with the Croatia Aviation Law, so that the missing provisions could be identified. There might be reasons for certain provisions to be missing. We might discover problems, difficulties, obstacles etc. Therefore, the Study was planned to avoid the impression we were trying to indoctrinate the national groups with which we were supposed to work with, and to make it clear we were listening to them (i.e. were open to their explanations and suggestions). In addition, the EU Aviation Law could always be used as a reference point in the process of determining the missing provisions in the national law we were expected to work upon. Once the missing provisions were identified, the process of drafting amendments (legislative drafting) could start. To draft amendments means to follow expert knowledge on legislative drafting. However, this process is not simply copying the missing law. In fact, it would be counterproductive to do so, as it might create problems in the implementation of the amended law. The law is like a live organism and has to be properly adapted to the specific environment. The process will be explained in the forthcoming chapters.

Amending the existing Aviation Law

A practical approach

Amending a law is a creative process. Basic interests have to be transformed into norms, so that their expression and applications couldn't be compromised. To draft amendments means to follow expert knowledge on legislative drafting, the State tradition and its existing socio-economic relations, economic and cultural development, and political needs and requirements. In other words, the process of amending the law is to be determined by a specific State environment. Reference State law provisions are not to be copied in the model State law provisions, but carefully analyzed instead, in order to clearly identify the European standard and, then that standard has to be put into proper wording, i.e. drafting, having in mind all the above mentioned specifics of the environment. Therefore, experts well acquainted with the region can achieve the best results in amending the existing law of the CARDS States.

The process of amending the law has also to be practiced with patience, informed knowledge, analytical skill, assessments of the future effect of the new legislation, and certain awareness that the new legislation will result in the desired goals and effects. It has to be organized, well planned and directed. This purpose could be accomplished by a programming process with the following goals: (i) to establish the diagnosis of the situation in the target domain; (ii) to show whether there was a need for such amendment; (iii) to determine the

requirements driving the needed changes; (vi) to identify the new needs and requirements; (v) to define who had to carry responsibility for the different parts of the project; (vi) to establish phases and types of amendments; (vii) to determine the time frame for its completion.

The process of amending the law further requires following up and analyzing the application of the new law, particularly by the legislative (parliament) and executive (ministry) bodies.

Specific methods

During the process of amending law, depending on the characteristics of the inter-relations intended to be regulated, the following specific methods can be used independently or in combination: (i) enumerative/taxonomic method, (ii) an abstract method. (iii) a principled method. (vi) use of precedents, and (v) best practice exemplification.

Legislative drafting and language

It is understood that language is very important in the process of legislative drafting. Language has to have a recognizable sense, clarity, precision and intent. Clarity has to be a constant preoccupation in drafting amendments, so that to ensure there is no room for ambiguities. To avoid clarity means to avoid responsibility and accountability. The text of the amendments has to be simple, it has to have integral logic, and the same names have to be used for the same concepts.

Proper use of language is thus important particularly when the legislation is intended to establish a new type of relations in a certain domain. The CARDS project was intended to improve civil aviation safety in the region by establishing the European standards, i.e. by creating new relations in that area. The respect for the authority of the legislation and the legal system has to be accomplished by proper usage of the language in the legislative drafting.

The Basic Structure of Euro-Compatible Legislation

In the process of drafting amendments to the existing national aviation law, the norms had to be systematically organized in a clear, coherent, and logical framework. Systematization of the norms had to be carried out in terms of both the content and the form. Thereby, the composition and formulation of legislation had to be precise. The norms had to represent logical notions, had to be systematically and clearly expressed, and had to regulate certain interactions

in accordance with the determined requirements, goals, and motives. In this way the new legislation stability and order were aimed to be accomplished.

The Structure of the Legislation Contents

The structure of the legislation contents has to include: (i) a name; (ii) basic, general provisions; (iii) specific provisions; (iv) transcending provisions; (v) concluding provisions; (vi) the date and the signature. It is important that a new legislation should start with an article of clear definitions of the basic terms and phraseology.

The Formal Structure of the Legislation

The formal structure of any legislation will contain: (i) parts; (ii) chapters;(iii) sections;(iv) articles;(v) specific provisions. It might be not always necessary to have all of the mentioned elements of the formal structure of any legislation. It may depend on the scope of various relationships that have to be regulated. When amendments are to be introduced, their drafting must follow the structure of the legislation contents and the legislation formal structure.

The Project Phases

The Study proposed to have four principle phases:

The first phase

The Study suggested to start the project with a seminar/workshop on the legal and institutional issues. The States concerned ensured that the same person (representatives/designated experts) attended all seminars for the reasons of continuity. The objective of the starting seminar was to get the stakeholders to know each other and to choose a model State.

The Second Phase

The Legal Expert/Coordinator of the project was supposed to organize: (i) a national consultation meeting with entities and authorities concerned, and (ii) a seminar with designated experts of the CARDS States on the legal, institutional issues and the issue of regional cooperation in order to ensure strong commitment of the respective States and the ability of designated experts to amend the existing national aviation law.

Under the supervision of Legal Expert/Coordinator of the project, designated experts in each country were expected to (i) identify shortcomings and draft amendments to the existing national aviation law; (ii) draft proposals for the enforcement of institutional and organizational frame work; and (iii) draft proposals for regional cooperation.

The Third Phase

In this phase of the project the legislation was supposed to be presented for passing through the respective national parliaments.

The Forth Phase

During this phase the legal expert/coordinator was supposed to support the process designed to set up legislative documentation on the amendments to the legislation; to develop implementing regulations; to set up institutional arrangements; to provide technical support in adopting the procedure of introducing the new legislation and exchanging the expertise of the local human recourses. He was also expected to support the development of integration/implementation proposals in accordance with the International and European Aviation Law.

Coordination

The required coordination role of the legal expert/coordinator: (i) at the national level among respective entities and authorities; (ii) at the regional level among the respective States; (iii) between the CARDS States and EUROCONTROL. It necessitated the establishment of connections among the various subjects involved and harmonization of the working process at all levels in order to meet the defined deadlines and to achieve the objectives stated in Working Package 2.

Deliverable

Work Package 2 should result in the following deliverables: (i) a report of workshop on institutional and legal issues, (ii) a report on the issue of regional cooperation; (iii) the list of the coordinated proposals for cooperation between the States concerned; (iv) a set of legislative and regulatory texts and amendments to the existing aviation law of the CARDS States that were Euro-compatible, and (v) a report on support actions rendered to the States concerned by the legal expert/coordinator and EUROCONTROL.

When the process of compatibility of the aviation law of each of the above States with the EU aviation law was supposed to be over, the differences among them were expected to gradually get narrowed or even disappear altogether. Hence, at that point it might be easier for them to establish cooperation in politically sensitive areas.

Concluding observations

The methods proposed in the Study were intended to maximally simplify Work Package 2 proceedings, given the complexity of the subject. It also intended to focus on the subject i. e. on how the objectives of Work Package 2 should be efficiently accomplished.

The project was complicated because of several reasons: on the one hand, the CARDS States were not fond of the idea of cooperating in terms of reintegration, which at that time was the EU approach to the region; on the other hand, it was necessary to achieve firm cooperation in introducing a new aviation law, considering its safety and securities specifics to be preserved. The difficulties in implementing cooperation were overcome by way of incorporating into the national legislations the European Aviation Law with its mechanism for cooperation.

The methods suggested in the Study were meant to result in the accomplishment of Euro-compatibility of the CARDS States law with the EU Aviation Law and in narrowing or even ironing out the differences in CARDS States aviation laws. It is viewed as an outline of the authors' contribution to the project.

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Brussels, 10. 10. 2012

COMMISSION STAFF WORKING DOCUMENT
SERBIA
2012 PROGRESS REPORT
accompanying the document

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

{COM (2012) 600 final}

1. INTRODUCTION

1.1. Preface

Since March 2002, the Commission has reported regularly to the Council and the Parliament on progress made by the countries of the Western Balkans region. This report on progress made by Serbia in preparing for EU membership largely follows the same structure as in previous years. The report:

- briefly describes the relations between Serbia and the Union;
- analyses the situation in Serbia in terms of the political criteria for membership;
- analyses the situation in Serbia on the basis of the economic criteria for membership;
- reviews Serbia's capacity to take on the obligations of membership, i.e. the *acquis* expressed in the Treaties, the secondary legislation, and the policies of the Union.

This report covers the period from October 2011 to September 2012. Progress is measured on the basis of decisions taken, legislation adopted and measures implemented. As a rule, legislation or measures which are under

* In view of fact that the text in this section are an official nature, no alternations of any kind have been made to them by the editor of the *Review of International Affairs*.

preparation or awaiting parliamentary approval have not been taken into account. This approach ensures equal treatment across all reports and enables an objective assessment.

The report is based on information gathered and analysed by the Commission. Many other sources have also been used, including contributions from the government of Serbia, the EU Member States, European Parliament reports¹ and information from various international and non-governmental organisations.

The Commission draws detailed conclusions regarding Serbia in its separate communication on enlargement², based on the technical analysis contained in this report.

1.2. Context

The European Council granted Serbia the status of candidate country on 1 March 2012, on the basis of the Commission Opinion on Serbia's membership application adopted on 12 October 2011. The Council concluded on 5 December 2011 that the opening of accession negotiations will be considered by the European Council, in line with established practice, once the Commission has assessed that Serbia has achieved the necessary degree of compliance with the membership criteria, in particular the key priority of taking steps towards a visible and sustainable improvement of relations with Kosovo³, in line with the conditions of the Stabilisation and Association Process.

1.3. Relations between the EU and Serbia

Serbia is participating in the **Stabilisation and Association Process**.

The **Stabilisation and Association Agreement** was signed, along with the **Interim Agreement** on trade and trade-related matters, in April 2008. It provides a framework of mutual commitments on a wide range of political, trade and economic issues. The Interim Agreement entered into force on 1 February 2010. At the 14 June 2010 Foreign Affairs Council, Ministers agreed to submit the Stabilisation and Association Agreement to their parliaments for ratification. The process is close to completion, with ratification still pending in only one Member State.

Serbia has built a positive track record in implementing the obligations of the Stabilisation and Association Agreement and the Interim Agreement on trade and trade-related matters. An interim committee and a number of sub-committees meet annually, to discuss topics including the internal market, competition, transit traffic, trade, customs, taxation, agriculture and fisheries. In general terms, Serbia is meeting its SAA/IA commitments in these areas and cooperation is progressing well.

¹ The rapporteur for Serbia is Mr Jelko Kacin.

² Enlargement Strategy and Main Challenges 2012-2013, COM(2012) 600.

³ This designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.

In January 2012, the Serbian government adopted a revised and updated version of the National Programme for the Integration of Serbia in the European Union for the period 2008–2012, taking account of the Commission's Opinion.

Political dialogue meetings at ministerial level have been held since 2003. Policy dialogue between the European Commission and the Serbian authorities has been taking place as part of **Enhanced Permanent Dialogue** (EPD) since 2003. Inter-parliamentary meetings between members of the European Parliament and of the Serbian parliament have been held annually since 2006. Several EPD meetings covered sectors of the SAA that are not included in the Interim Agreement, such as energy, the environment, social policy, justice, freedom and security.

Serbia participates in the multilateral **economic dialogue** with the Commission and the EU Member States. The aim of this dialogue is to prepare Serbia for participation in multilateral surveillance and economic policy coordination under the EU's Economic and Monetary Union. In this context, was invited for the first time to the Council meeting on pre-accession fiscal surveillance in May 2012.

Visa liberalisation for citizens of Serbia travelling to the Schengen area has been in force since December 2009. The Commission set up a post-visa-liberalisation monitoring mechanism to assess whether the implementation of reforms introduced by the country was consistent with the visa roadmap and sustainable. This was complemented by an alert mechanism to prevent abuses. The Commission presented its second monitoring report to the European Parliament and the Council in December 2011 and adopted the third in August 2012. A **readmission agreement** between the European Union and Serbia has been in force since January 2008.

Financial assistance is provided through the Instrument for Pre-Accession Assistance (IPA). IPA assistance is currently managed centrally by the EU Delegation in Belgrade. Serbia is preparing for decentralised management of IPA funds. The Multiannual Indicative Planning Document for the period 2011–2013 adopts a sector-based approach focusing assistance on the following seven sectors: justice and home affairs; public administration reform; social development; private sector development; transport; the environment, climate change and energy; and agriculture and rural development. In addition, the country continues to benefit from various regional and horizontal programmes. Cross-border cooperation is also used to promote capacity building and dialogue between the local and regional authorities of neighbouring countries, namely Bulgaria, Hungary, Romania, Bosnia and Herzegovina, Croatia and Montenegro.

Overall, between 2001 and 2012, the EU committed over € 2.2 billion to Serbia in the form of grants and € 5.8 billion in the form of soft loans. For the period 2007–2012, the Commission has earmarked € 1,176 million for IPA projects to be implemented in the country.

Civil society in Serbia has received extensive financial support from the EU under the IPA Civil Society Facility and national programmes, as well as through the European Instrument for Democracy and Human Rights. Aid objectives include involving civil society more widely in decision-making and increasing the capacity of independent civil society organisations. Support for civil society under 2011 programmes stands at over € 4.2 million.

Serbia participates in a number of **EU programmes**: the Seventh Framework Programme for research and technological development, PROGRESS, the Competitiveness and Innovation Programme, the Information and Communication Technologies Policy Support Programme, the Culture Programme, the Customs Programme and the Fiscalis Programme.

2. POLITICAL CRITERIA

This section examines the progress made by Serbia towards meeting the Copenhagen political criteria, which require stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. It also monitors regional cooperation, good neighbourly relations with enlargement countries and Member States and compliance with international obligations, such as cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY).

2.1. Democracy and the rule of law

Constitution

The Constitution is largely in line with European standards. However, some provisions still need to fully reflect the recommendations of the Venice Commission in its Opinion of March 2007, in particular those allowing control by political parties over parliamentary mandates and those providing for an excessive parliamentary role in appointments and dismissals, particularly in the judicial system.

Parliament

Serbia held parliamentary and local elections at their normal term in May 2012, together with provincial elections in Vojvodina. Early presidential elections were also held in May 2012, after the incumbent, President Boris Tadic, decided to resign, which streamlined the electoral calendar. Serbia agreed to OSCE facilitation in organising electoral operations for its parliamentary and presidential elections in Kosovo. The Anti-Corruption Agency started to implement the 2011 legislation on the financing of political parties and to monitor the electoral campaigns. The elections were free, fair and peaceful and were described as *'competitive, held in a conducive environment and professionally organised'* by international observation bodies in spite of a certain lack of

transparency in the proceedings of the State Electoral Commission and in the administration of the new single voters' registry. These bodies made recommendations to improve the electoral administration. Media reporting was also noted as insufficiently balanced and analytical, which pointed to the wider need to clarify the issue of media ownership. Several opposition parties made allegations of fraud which have not been elucidated by the authorities so far.

The leader of the Serbian Progressive Party (SNS), Tomislav Nikolic, won in the presidential election against the incumbent Boris Tadic, the leader of the Democratic Party (DS). The SNS list secured the largest number of MPs, with 73 seats out of 250, followed by the DS list with 67 seats. The list led by the Socialist Party of Serbia (SPS) came third with 44 seats. The Democratic Party of Serbia (DSS) secured 21 seats, the list led by the Liberal Democratic Party (LDP) 19 seats and the Union of Regions of Serbia (URS) 16 seats. The remaining 10 seats were gained by parties representing minorities. Most of these parties are in favour of Serbia's joining the EU. The Serbian Radical Party, which opposes Serbia's EU integration efforts, did not reach the threshold for entering parliament.

The new parliament was constituted in May 2012. In line with the 2011 electoral reform, MPs were for the first time appointed in the order in which they appeared on the electoral lists and the practice of 'blank resignations', by which MPs tendered resignation letters to their parties at the beginning of their term of office, is now prohibited. There are 84 women in parliament, representing 34% of all MPs. Members of ethnic minorities continue to be represented in parliament. In line with the 2010 rules of procedure, working bodies were streamlined, with the aim of making the parliament more effective. Opposition chairs a number of committees, including the Committee for European Integration, but no longer those covering finance and security and internal affairs.

In the 2011 autumn session, several laws arising from the National Plan for Integration into the EU were adopted. Parliamentary activities slowed down in the run-up to and during the electoral campaign. Following the set-up of parliamentary bodies end of July, work has resumed; urgent procedures with limited consultation and discussion time have been applied to several new pieces of legislation, including problematic changes to the central bank law.

The parliament developed its use of public hearings, including one on its role in the EU integration process in January 2012 and another on access to IPA funds in March 2012. Parliamentary oversight of the work of the executive remained weak. There were no regular sessions of questions to the government from December 2011 to July 2012. The work in committees remained reactive, with core debates taking place in the plenary.

Overall, the elections were competitive, professionally administered and peaceful throughout the country. The 2011 electoral framework legislation was implemented but results of the monitoring of the financing of political parties are still awaited. Legislative activity was cut short by the approach of the elections, but other parliamentary activities continued normally. The authorities need to

follow up the recommendations of the OSCE/ODIHR election observation mission.

Government

Following the parliamentary elections, a new coalition government took office in July, on the basis of an agreement between SNS, SPS, URS and two smaller parties, with the leader of SPS assuming the position of Prime Minister. The new Prime Minister has pledged to accelerate the EU agenda of reforms with the aim of opening accession negotiations.

All over the reporting period, the government demonstrated its commitment to EU integration, notably by continuing to implement the relevant provisions of the Interim Agreement, in line with the agreed liberalisation schedule. It undertook, with the support of the Serbian European Integration Office (SEIO), the Coordination Body for accession to the EU and the European Integration Council, to follow up on the recommendations of the Commission's Opinion and adopted a third revision of its National Programme for EU Integration (NPI) in January 2012. The government has been drafting a number of laws aimed at further alignment of national legislation with European standards and adopted new implementing legislation on regulatory impact assessment. There has been some improvement in its monitoring of the annual work programme. However, the drafting process continues to lack transparency, sufficient structure and time for effective consultation of all interested parties, which would also make the legal environment more predictable. The implementation and monitoring of adopted legislation needs to be improved. Ministries do not always follow up and even in some instances openly challenge the opinions and recommendations of independent regulatory bodies, including the State Audit Institution. The General Secretariat of the Government needs to be strengthened to be able to drive the policy system towards greater effectiveness and high-quality output.

As regards **local self-government**, the legislation on municipal finance needs to be clarified and properly implemented to ensure that municipal funding is predictable. There is no available overview of the functions delegated to municipalities. Responsibilities have continued to be transferred without ensuring sufficient capacity and resources at local level. The National Council for Decentralisation continues to be inactive. Consultation of local authorities when deciding on new legislation or amendments to existing laws that have implications at local level needs to be further improved.

Overall, the outgoing government completed a full term in office and the new government is up and running since July. Both were active in pursuing the country's strategic goal of EU integration. However, the government continues to lack a consistent, structured approach to consulting stakeholders and needs to develop its monitoring of the preparation and implementation of new legislation. The legal framework for local self-government remains to be clarified and properly implemented.

Public administration

Little progress has been achieved regarding public administration reform. The Law on Administrative Inspection, which governs procedures for checking that administrative bodies comply with administrative law, was adopted in November 2011. The Public Administration Reform Council continued to address only administrative and technical issues and did not actively steer the implementation of the Public Administrative Reform Strategy which remains insufficient. Greater political commitment, better coordination, and increased financial and human resources are needed to bring about administrative reform.

The legislative framework is still incomplete. New legislation on general administrative procedures and on local government employees and salaries is yet to be adopted. The Law on Administrative Disputes still needs to be fully aligned with European standards for judicial review of administrative acts.

The policy planning and coordination system needs to be improved to steer policy development and produce consistent work plans for the public administration. Administration and management capacity at local level are weak and significant disparities between municipalities persist. The Law on Civil Servants does not apply to local government employees.

The recruitment and career system is not yet fully merit-based and recruitment is still prone to political influence. Local government does not have a merit-based and professional human resources service. A number of appointments to senior civil service positions are still pending. Selection procedures are not applied uniformly and managers still have too much discretion when choosing candidates from lists drawn up by selection panels following competitions. Temporary employees are still not recruited according to competitive criteria and contracts are allocated without internal or public competition. Changes in the administration envisaged by the new government should not be detrimental to its capacity to make further progress in the alignment with and implementation of the *acquis*.

A new training programme for civil servants was adopted in 2012 and several training courses were delivered. However, only a small percentage of civil servants, and in particular a very small percentage of managers, took part in training. Induction training is not provided.

Several **independent regulatory bodies** continue to face logistical constraints. Parliament needs to resume the review of their annual reports and improve follow up of legislative proposals tabled by such bodies. As regards restructuring of public agencies, due consideration has to be given to the need to maintain the capacities and entitlements to implement the *acquis*. In some cases, when prescribed by the *acquis*, the independence of such bodies needs to be preserved.

The Ombudsman's Offices continued to be effective and have increased their accessibility. The term of office of the State Ombudsman was renewed by parliament in August 2012. The number of citizens' complaints has increased. The largest number of reported violations relates to governance. Changes to the Law on the Ombudsman, which should enhance the Ombudsman's

independence, still have not been adopted. The Ombudsman's recommendations were not sufficiently followed up.

The Commissioner for Information of Public Importance and Personal Data and Protection continued to be active and his term of office was renewed by parliament in December 2011. Some progress has been made in the implementation of legislation ensuring access to information of public importance. However the recommendations of the Commissioner are still not sufficiently followed up (*See also, for data protection, Chapter 23 - Judiciary and fundamental rights*).

The State Audit Institution (SAI) of Serbia continued to gradually build up its capacities by recruiting further auditors and the term of office of its president was renewed by parliament in September 2012. The SAI has now approximately 130 staff, including over 100 auditors. The SAI also continued to work on improving audit methodology and increased audit coverage (*See also Chapter 32 – Financial control*).

Amendments to the central bank law adopted in August 2012 have seriously undermined the independence of the National Bank of Serbia (*See also Chapter 17 – Economic and monetary policy*).

Overall, public administration reform is proceeding at a slow pace and is hampered by insufficient political commitment. The legislative framework needs to be completed and fully aligned with international standards. Implementation of the existing laws and strategy needs to be improved. Merit-based recruitment and promotion systems should be developed and implemented. The follow-up of the recommendations of independent regulatory bodies needs to be stepped up.

Civilian oversight of security forces

There was little progress on civilian oversight of security forces. A specific parliamentary committee for civilian oversight of security services was set up in July, in line with the 2010 rules of procedure. Parliamentary oversight remained limited in practice. The legal framework for the security and intelligence services' monitoring of communications needs to be clarified. Provisions of the Law on Military Security and Military Intelligence Agencies which allowed sensitive data related to citizens' communications to be monitored without a court order were ruled unconstitutional by the Constitutional Court in April 2012. There are allegations that the unclear legal situation has led to abuses. A law on access to state security files remains to be adopted.

Judicial system (See also Chapter 23 – Judiciary and fundamental rights)

Serbia has made little progress on judicial reform.

Amendments aimed at improving the efficiency of the Constitutional Court were adopted in December 2011. Deliberations in panels of eight or three judges are now allowed for certain decisions, whilst a full Court session remains the normal format

for important cases. In line with the recommendations of the Venice Commission, constitutional changes and further measures need to be adopted to reduce the growing backlog. In particular, cases involving breaches of the right to trial within a reasonable time, which account for 40% of the Constitutional Court backlog, could be delegated to the Supreme Court of Cassation.

As for the *independence* of the judiciary, the High Judicial Council (HJC) and the State Prosecutorial Council (SPC) took over the administration of the budget of courts and prosecution services in March 2012; the Ministry of Justice remains in charge of IT and capital expenditures in the court system and funding of the courts' administrative staff. The HJC and the SPC have yet to finalise the appointments of court presidents and public prosecutors. The HJC and the SPC have not yet adopted rules on regular evaluation of the work and performance of serving judges and prosecutors. The foreseen evaluation of the magistrates newly recruited in 2009 for a three year term is in particular pending. A proper merit-based career system for judges and prosecutors remains to be fully developed. It is still possible to enter the judicial profession, in particular at higher levels, on the basis of unclear criteria without having passed through the Judicial Academy. The legal framework still leaves room for undue political influence over the judiciary, in particular as regards parliament's power to appoint judges and prosecutors — including the President of the Supreme Court of Cassation and the Republic Public Prosecutor — and its direct participation in the work of the HJC and the SPC.

The re-appointment procedure carried out for judges and prosecutors in 2009/2010 and the review process conducted to correct its shortcomings were overturned in July 2012 by the Constitutional Court as not meeting the required standards. The Court revoked all the decisions of the HJC and the SPC on the non-re-appointment of judges and prosecutors that had been appealed and instructed the Councils to reinstate all of them within 60 days. For the judges, the Court considered *inter alia* that the HJC did not apply the required quorum and breached the requirement of impartiality. In this respect, the Court objected to the participation of *ex-officio* members — the President of the Supreme Court, the head of the parliamentary committee and the Minister of Justice — and the member representative of the lawyers to both the first decision on re-appointment and the review process. The Court also considered that the presumption of suitability required that judges could only be dismissed by the positive votes of the majority of the HJC members, which was not the case as three of them were in part or fully unavailable to act (one resigned and was replaced 3 months later, another faced criminal proceedings and a third one faced a procedure for incompatibility of duties as dean of a law faculty). For the prosecutors, similar shortcomings were found which invalidated the SPC's assessment that the petitioners did not fulfil the criteria of worthiness, professional qualification and competence. In particular, the Constitutional Court found that the review process unfairly placed the burden of proof on the petitioners and that the Council's decisions were often based on facts and assertions that could not be challenged by the petitioners. As a result, the Serbian authorities need to evaluate how the judicial reform can be further advanced after

most non-reappointed judges and prosecutors are to be reintegrated further to the rulings of the Constitutional Court.

The *impartiality* of judges has continued to be broadly ensured thanks in particular to automated allocation of court cases, which has now been introduced in all commercial courts and general courts. New case management software has been introduced in the Administrative and Appellate Courts in Belgrade and the Supreme Court of Cassation in July 2012.

To ensure *accountability*, steps were taken to set up a disciplinary system. The HJC introduced a disciplinary prosecutor and commission, which handled a little number of cases and took a few final decisions. The SPC adopted Rules on disciplinary procedure and liability in July 2012 which remain to be fully aligned with European standards. The SPC has yet to set up disciplinary bodies and establish a track record of investigating and imposing penalties in disciplinary cases. The higher courts and the Ministry continued internal inspections on technical and administrative matters in the courts, identifying shortcomings in registering and handling of court cases.

A number of laws came into force aimed at improving the *efficiency* of the judiciary and applying international standards in national courts. The Judicial Academy selected a new generation of students and provided a variety of in-service training programmes for judges, prosecutors, judicial staff and attorneys, which still need to be systematised and structured. The judicial budget for 2012 remained stable at some € 213 million (around 0.65% of GDP). In 2011, the courts received 2.23 million new cases, resolved 2.65 million cases and were left with a backlog of 3.34 million cases. The new Civil Procedure Code has been in force since February 2012, aimed at increasing efficiency in civil procedure, which accounts for two-thirds of all cases before the Serbian courts. The first private bailiffs were sworn in and first notaries selected in May 2012. However, the entry into force of the law on public notaries was postponed to 2013. Major imbalances in the workload of judges persist between courts, particularly between those in Belgrade and other courts. A comprehensive analysis of the functioning of the new court network is needed in terms of cost, efficiency and access to justice. The quality of judicial statistics needs to be improved.

The new Criminal Procedure Code has been applied in organised crime and war crimes cases since January 2012 (and is to be applied in all criminal cases as of January 2013). It introduces a new model of criminal investigation, giving the prosecution the lead role in collecting the evidence and presenting it before the court. One aim is to shorten the investigative phase, but this will require that the prosecution services rise to the complexity of their new role. The fully adversarial system raises questions regarding procedural safeguards, in particular the ability of poorer defendants to finance an effective defence, a concern echoed by the Ombudsman and the Commissioner for Free Access to Information of Public Interest. At the same time, the prosecution service still has to demonstrate its ability to obtain convictions in high-level cases against well-funded defence teams. A careful analysis of the implementation of the legal framework on abuse

of office or authority also needs to be conducted in order to ensure that it is consistent and proportionate. Generally, Serbia needs to ensure that procedural safeguards are applied consistently across the country.

The Administrative Court continued to increase its activity while the inflow of new cases was steady and so managed to reduce the backlog by some 2,500 cases to 17,711 by the end of 2011. However, administrative judges' expertise needs to be developed, particularly in areas such as asylum, consumer protection, state subsidies and competition.

Overall, little progress was made, mostly in enforcing new legislation aimed at improving the efficiency of the judicial system. The review of reappointments of judges and prosecutors did not correct the existing shortcomings and was overturned by the Constitutional Court who ordered the reinstatement of all judges and prosecutors that had appealed their non-reappointment. Cases returned by the Constitutional Court will need to be processed diligently and in accordance with the Constitutional Court's decisions. A system of professional evaluation, effective disciplinary rules and stronger integrity safeguards remains to be established. In order to restore the confidence of the citizens, the authorities will need to consider additional measures to strengthen the independence, impartiality, competence, accountability and efficiency of the judiciary, in particular: transparent criteria for appointments of judges and prosecutors; initial and in-service training under the Judicial Academy's responsibility, together with appraisal of serving judges and prosecutors, including of the newly appointed ones in 2009; integrity safeguards; court rationalisation. To meet these challenges, a new strategy on judicial reform is needed, together with an action plan to implement the strategy, based on a functional review of the judiciary.

Anti-corruption policy (See also Chapter 23 – Judiciary and fundamental rights)

Serbia has made little progress in the fight against corruption. Progress was made mainly regarding enforcement of the legislation. Implementation of outstanding GRECO recommendations continued. The amendments to the Law on Health Care and the Law on Advocates include provisions on conflict of interest. The Government has not yet finalised its National Anti-Corruption Strategy for 2012–2016 and the corresponding Action Plan. There has been little evidence in practice of the coordinating role officially assigned to the Minister of Justice under the previous government. A specific responsibility in this area was entrusted to the First Deputy Prime Minister in the new Serbian government.

The Anti-Corruption Agency's operations, which focus on prevention, increased. The Agency started to implement the 2011 Law on the Financing of Political Activities. It adopted implementing legislation on the monitoring of electoral campaigns and set up an extensive network for the monitoring of the 2012 elections. It also collected annual financial reports from a majority of political entities and issued warnings to 10 of them who had failed to submit such

report by the deadline. The Agency continued to make targeted checks on asset declarations it has received. This activity led to misdemeanour judgements in two cases, and criminal charges in another. The Agency collected few data for its new registry of legal entities involved in public procurement in which public officials have shares over 20%. Regarding cases of dual public functions presenting a risk of conflict of interest, the Agency took close to 500 decisions in 2011 that are generally being enforced. However, the Agency has still to establish a track record of effective checks on party funding. It has not yet made full use of its powers and needs to improve cooperation with relevant stakeholders to investigate declarations of assets effectively.

The Anti-Corruption Council continued to be active in exposing and analysing cases of systemic corruption. There has been very limited follow-up to its detailed reports of high-profile corruption cases.

The special prosecutor for corruption and organised crime launched investigations into 115 corruption cases in 2011. These included several medium- to high-level cases. There was a marked increase in the number of lower-level corruption cases for which the prosecutor's offices initiated investigations in 2011, but in the great majority of such cases sanctions remained lenient. Further efforts are needed to establish a track record of prosecution and conviction, particularly in high-level cases. The law enforcement bodies need to become more proactive and develop their ability to conduct financial investigations. There was little action to protect whistleblowers.

Internal checks by the customs administration and the police have continued to result in a sizeable number of cases being investigated and penalties imposed. Public procurement, management of public enterprises, privatisation procedures and public expenditure remain areas of serious concern, in which independent supervision and capacity for the early detection of wrongdoing and conflicts of interest are underdeveloped. Health and Education remain particularly vulnerable to corruption. Comprehensive risk analyses for areas vulnerable to corruption are needed. Coordination between all stakeholders needs to be strengthened to ensure effective prevention and prosecution of corruption cases.

Overall, the implementation of the legal framework for fighting corruption has continued. The Anti-Corruption Agency's operations increased, mostly in relation to the financing of political parties. However, corruption remains prevalent in many areas and continues to be a serious problem. A new Anti-Corruption Strategy and Action Plan are still awaited. The implementation of the legal framework and the efficiency of anti-corruption institutions need to be significantly improved. Further efforts are needed to adopt a more proactive approach to investigating and prosecuting corruption and the judiciary needs to gradually build up a solid track record of convictions, including in high-level cases, particularly in cases of misuse of public funds. Stronger political direction and more effective inter-agency coordination are needed to significantly improve performance in combating corruption.

2.2. Human rights and the protection of minorities (See also Chapter 23 – Judiciary and fundamental rights)

Observance of international human rights law

Serbia has already ratified all of the main international human rights instruments.

During the reporting period, the **European Court of Human Rights** (ECtHR) delivered judgments on 40 applications finding that Serbia had violated rights guaranteed by the European Convention on Human Rights (ECHR). The bulk of the judgments so far relate to the excessive length of court cases and to non-enforcement of domestic judgments. Due enforcement of ECtHR's rulings in cases of compensation of workers from State owned enterprises, for which a decree was taken by the government in March 2012, is needed. A total of 4.833 new applications have been submitted to the ECtHR since September 2011, bringing the total of pending applications to 9.478. The number of filed applications against Serbia is steadily growing and now represents 6% of all filed applications with the Court.

There is some progress in the **promotion and enforcement of human rights**. Various activities aimed at promoting tolerance, anti-discrimination and respect for human rights were carried out. Different occasions such as those marking International Human Rights Day, International Women's Day, International Roma Day and Pride Day were used to raise public awareness of human rights issues. Various training courses were held for judges, prosecutors, legal practitioners, prison officers and police officers. However, the implementation of relevant international instruments needs to be further improved.

Overall, the legislative and institutional framework for the observance of human rights is in place and some active measures were taken to ensure its implementation. However, further efforts to implement international instruments are required.

Civil and political rights

Some progress has been made on the **prevention of torture and ill-treatment** of persons deprived of their liberty. The Ombudsman, acting as of January 2012 as National Prevention Mechanism against torture, held its first inspections of prisons, psychiatric hospitals, police stations and social care centres. Poor living conditions, unsatisfactory healthcare and a lack of adequate and specific treatment programmes are still a matter of concern. There are no adequate legal safeguards for the placement and treatment of people with mental disabilities involuntarily placed in psychiatric or social care institutions. The internal control system for the police needs significant strengthening in terms of staff and training and needs to improve its response to allegations of ill-treatment.

Some progress has been made regarding the **prison system**. The Action plan implementing the Strategy for the reduction of prisons' overcrowding was

adopted in November 2011. Some improvements were made to prison infrastructure and a new prison facility with 450 places was opened near Belgrade in February 2012. However, the prison system continued to face serious problems due to overcrowding with a number of prisoners over 11,500 for some 5 to 6,000 places. Further efforts are needed to improve living conditions, healthcare and provide adequate treatment programmes for prisoners. Alternative sanctions need to be introduced on a larger scale. There are not enough frontline prison staff. An efficient probation system remains to be introduced.

Constitutional guarantees of **access to justice** are in place. However, the length of court proceedings and the backlog of cases continue to remain issues of concern. Legislation and funding for an effective system of free legal aid still need to be developed.

The legal framework to ensure **freedom of expression** is in place. As regards the media, several working groups have been set up to implement the Media Strategy adopted in October 2011 and its accompanying action plans. The Republican Broadcasting Agency (RBA) has improved the transparency of its work and has enhanced its technical capacity for monitoring broadcasters. However, violence and threats against journalists remain of concern, although their frequency has decreased slightly. The Serbian authorities have continued to provide police protection for journalists and media outlets which have received threats. Investigations into murders of journalists dating back to the late 1990s/early 2000s and into recurring threats against journalists have so far failed to identify the perpetrators. A more comprehensive and proactive approach by the police and the judiciary remains essential. Monitoring of discriminatory or hate speech by the RBA needs to be improved. The procedure by which RBA members are appointed continues to raise concerns about the independence of this body. Access to advertising in the media remains under the control of a few economic and political actors, entailing a significant risk of influence on the media and of self-censorship. Transparency of media ownership has yet to be ensured. The implementation of the media strategy needs to be speeded up.

Freedom of assembly and association is constitutionally guaranteed and in general respected. 91 political parties, including 53 representing minorities, were registered as of August 2012. In December 2011 the Constitutional Court ruled that a decision by the Ministry of the Interior not to allow the 2009 Pride Parade to take place in the location registered by the organisers was a violation of freedom of assembly. However, while a Pride festival could take place in Belgrade from 30 September to 7 October 2012, the Pride Parade itself, scheduled for 6 October 2012, was banned by the Serbian authorities on security grounds, for the second year in a row. The activities of extreme right-wing organisations and of violent groups of so-called sports fans continue to be a major cause of concern. The Constitutional Court banned a second such organisation in June 2012. Criminal proceedings were initiated in April 2012 against 12 persons suspected of having taken part in the attacks of foreign diplomatic missions in

Belgrade, including EU embassies, in February 2008. So far, one of the suspects was acquitted in first instance.

Civil society organisations continue to play an important role in social, economic and political life, and in promoting democratic values. The Office for Cooperation with Civil Society has been very active in raising awareness both among the public and among state institutions of the importance of involving civil society and citizens in decision-making. It has also established cooperation with other countries in the region. The Office has been allocated sufficient means, including financial resources, and now functions at full capacity.

Freedom of thought, conscience and religion is guaranteed and generally respected. Religiously motivated incidents declined. In addition to 7 religious communities recognised as traditional communities under a law passed in 2006, 18 religious organisations have been registered. The lack of transparency and consistency in the registration process continues to be one of the main obstacles preventing some smaller religious groups from exercising their rights, which also led to limit the access to church services in some minority language. A Constitutional Court ruling on the 2006 law which differentiate between traditional and other religious organisations is still awaited. The Ombudsman's 2011 annual report stressed continuing problems with regulating religious classes and the status of teachers of religion, particularly relating to the Islamic faith. Some media continued to propagate negative comments and hate speech against smaller churches.

Overall, there has been some progress on civil and political rights. The legal framework for freedom of expression is in place but violence and threats against journalists remain of concern. The implementation of the media strategy needs to be speeded up. Freedom of assembly and association are constitutionally guaranteed and in general respected. The Office for Cooperation with Civil Society has been very active. Freedom of thought, conscience and religion is in general respected but the registration process for religious communities continues to lack transparency and consistency. The National Mechanism for Prevention of Torture began work but needs further strengthening. Although one new facility was opened, overcrowding in the prison system remains a grave concern. On access to justice, an effective system of free legal aid still needs to be developed.

Economic and social rights (See also Chapter 19 – Social policy and employment)

There has been some progress relating to **women's rights and gender equality**. Serbia signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence in April 2012. A general protocol on procedures and cooperation between institutions, agencies and organisations in situations of domestic and partner-relationship violence was adopted in November 2011. The protocol aims to provide better protection for victims. A telephone helpline for victims of domestic violence was introduced in

November 2011. A new shelter for up to 20 victims of domestic violence was opened in Pancevo in January 2012, bringing the number of such centres to 13. However, violence against women remains an area of concern. The action plan for the implementation of the National Strategy for Prevention and Suppression of Violence against Women has yet to be adopted. Very often, domestic violence goes unreported and greater coordination is needed, e.g. on collecting and sharing data between all actors in the system for protecting women from violence. Women continue to be discriminated against in the labour market.

Children's rights are guaranteed by the Constitution and broadly respected. Little further progress has been achieved in this area. There has been a steady reduction in the number of children with disabilities placed in residential care institutions and an increase in the availability of community services for family members with disabilities. A media campaign to eradicate violence in schools has started and a telephone helpline for victims of juvenile violence was introduced in November 2011. However, both juvenile violence and violence against children continue to grow and are of great concern. Children's rights, particularly the rights of those belonging to vulnerable groups such as Roma, poor children, children with disabilities, children without parental care and street children, are unevenly protected. There are an increasing number of children living in poverty. Inclusive education is still not fully developed. The school drop-out rate is high among Roma children, children with disabilities and children living in remote areas. Too many Roma children are still being enrolled in special schools.

Some progress has been made concerning the **socially vulnerable and/or persons with disabilities**. The overall legislative framework is in place for the protection, inclusion and education of socially vulnerable persons and persons with disabilities. Efforts have been made to promote their rights, education and inclusion in the labour market. Deinstitutionalisation efforts have further continued, in tandem with the development of community-based services. However, the number of vulnerable persons registered with the National Employment Service remains extremely low. Access to public buildings for persons with disabilities needs to be further improved, especially in rural areas. Overall, social integration of persons with disabilities remains limited and as that of other vulnerable persons it needs further improvement.

There has been some progress on **anti-discrimination policies**. Serbia's anti-discrimination legislation is broadly in line with European standards on combating racism and racial discrimination. The Equality Protection Commissioner's office was active in raising awareness on discrimination and existing mechanisms for protection against discrimination. It received 450 citizens' complaints and dealt with 360 cases. The number of citizens' complaints has been increasing, indicating greater awareness of this problem. The groups most discriminated against are the Roma, persons with disabilities and sexual minorities, who, together with human rights defenders, often face hate speech and threats. Certain aspects of the Serbian anti-discrimination law are not in line with the *acquis*, notably the scope of exceptions from the principle of equal treatment, the definition of indirect discrimination and the obligation of

reasonable accommodation for disabled employees. The police response to attacks against the lesbian, gay, bisexual and transgender (LGBT) population has slightly improved. Several physical attacks and threats on members of the LGBT population and those promoting LGBT rights continued to occur and the 2011 and 2012 pride parades were banned because of security threats. For the first time, a Pride Day was marked in June 2012 by events co-sponsored by the government and civil society but so far, the new government has taken no further initiative towards the better inclusion of the LGBT population and a greater understanding across society.

Labour and trade unions rights are guaranteed by the Constitution and broadly respected but no further progress has been made. The 1996 law on strike is not in line with the EU and ILO standards, in particular as regards possible restrictions to the right to strike. Criteria for social partners' representativeness in social dialogue are still an issue: several registered trade unions are still not recognised and concerns remain as to the criteria for participation of employers' organisations. Social dialogue remains limited. The Economic and Social Council was not consulted regularly on draft laws and its meetings were often not attended by government officials. At local level, dialogue has generally been non-existent.

Progress was achieved concerning **property rights**. Implementation of the 2011 Law on Restitution has started. The Agency for Restitution was set up in January 2012 and invited former owners of properties nationalised after World War II, or their heirs, to submit claims for restitution between 1 March 2012 and 1 March 2014. The Agency has started processing the claims and has taken a number of decisions on restitution in kind. Given the ceiling of € 2 billion available for financial compensation, the corresponding individual decisions will only be taken after the deadline for submissions has expired, when the total number of claims is known. A Law on Rehabilitation adopted in December 2011 clarified the procedure and conditions under which members of the occupying forces recruited in Serbia during World War II can be rehabilitated, making them and their heirs eligible under the Law on Restitution.

Overall, the legal framework for the protection of social and economic rights is in place. However, discrimination based on race, ethnicity, gender, age and sexual orientation is widespread and further measures to fight all forms of discrimination are needed, together with efficient mechanisms to improve the protection of women and children against any form of violence. Social dialogue needs to be improved and the issue of social partners' representativeness criteria resolved. Implementation of the 2011 Law on Restitution has started.

Respect for and protection of minorities, cultural rights

A comprehensive legal framework for the protection of **minorities** is in place, in line with the Framework Convention on National Minorities of which Serbia is party, and generally respected. A Governmental Office for Human and Minority Rights was established as of August 2012, taking over the functions ensured by the previous Directorate within the Ministry for Human and Minority Rights,

Public Administration and Local Self-Government. Regular financial reports by the national minority councils to the Office for Human and Minority Rights have been introduced. The 2011 population census included provisions facilitating the participation of minorities such as translation of the questionnaire in nine languages and participation of minority languages speaking enumerators. However, implementation of the legislation needs to be further improved. The Republican Council for National Minorities has remained inactive. The Bosniak minority council has not yet been formally constituted. The recommendations made by the Serbian independent bodies with a view to improving the electoral framework for the national minority councils have not yet been followed up. The legislation is in place but implementation at field level remains uneven throughout the entire territory of Serbia. Generally, Vojvodina is more advanced while South and South-West Serbia lag behind, due in part to a lack of available funding. Coordination between the central and local level needs to be further improved as well as awareness on the minority issues legal framework, including from the minorities themselves. Further improvements are also needed regarding information and education in minority languages, including the provision of all the necessary textbooks.

The inter-ethnic situation in the Autonomous Province of *Vojvodina* remained good. Elections for the Provincial Assembly took place in May 2012. There have been only sporadic inter-ethnic incidents. Reactions to such incidents by provincial officials and the police were adequate but the legal process needs to be improved as the prosecution continued to treat them as misdemeanour cases rather than criminal offences. The Provincial Ombudsman's 2011 annual report noted that out of 1,237 complaints 65 were related to minority issues (5.25%). The law on Vojvodina's own resources, required by the Constitution, has yet to be adopted. The Constitutional Court invalidated in July 2012 some provisions of the law regulating the competences of Vojvodina.

As regards the municipalities of *Presevo*, *Bujanovac* and *Medvedja*, the situation continued to be stable overall, although there were sporadic incidents. An Albanian/Serbian Department of Economics was opened in Bujanovac in October 2011 as a branch of the Novi Sad Faculty of Economics and 69 students were enrolled. Students from Presevo and Bujanovac were granted scholarships to study at Novi Sad University. Several textbooks in Albanian were provided for the 2011 school year. In April 2012 the government and the municipal authorities reached an agreement on state investment in small and medium-sized enterprises in the three municipalities. Following calls by their political parties, Albanians however massively boycotted the October 2011 population census and partially boycotted the May 2012 parliamentary elections. Albanians continue to be underrepresented in the public administration and local public companies. The area remains among the poorest in Serbia and requires further commitment from the State authorities for its economic development.

Regarding the *Sandzak* area, the situation has been stable overall. The campaign for parliamentary and municipal elections was calm and no incidents

were recorded. Parties from Sandzak which participated in the elections in April 2012 signed a code of conduct for the campaign and largely abided by it. The Bosniak community continued to be underrepresented in the local administration, judiciary and police. A 2011 recommendation to a municipal administration by the Equality Commissioner to ensure the use of the Bosniak language and Latin alphabet has not been followed. The Ombudsman also issued recommendations in April 2012 to ensure adequate use of the Bosniak language in four municipalities. No solution was found to the outstanding issue of the election of the Bosniak national minority council, nor has the issue of the two rivalling Islamic communities been resolved. The area remained significantly underdeveloped, with a high unemployment rate and a lack of adequate infrastructure and investment. It requires further commitment from the State authorities for its economic development.

There has been some improvement in the position of the **Roma** population. Serbia has continued to take an active part in the Decade of Roma Inclusion 2005–2015 and has undertaken to implement the operational conclusions of the June 2011 EU-Serbia social inclusion seminar on Roma issues. The government signed in April 2012 a Memorandum of Understanding with the Ombudsman and the UNHCR to provide assistance on the registration of legally ‘invisible persons’ and changes were brought to the law of non-contentious procedures in August 2012 aimed at facilitating later registration in the birth registry. The measure allowing undocumented Roma to register using a provisional address has yet to be implemented. Active measures to increase social inclusion of the Roma have continued. The enrolment rate of Roma children in the education system has increased. 170 Roma teaching assistants have been employed together with 75 health mediators. The school drop-out rate for Roma children remains however high. The 2012–2014 Action Plan for the implementation of the Roma Strategy has not yet been adopted. Most of the Roma population lives in informal settlements under difficult conditions. Some positive steps to comply with international standards were taken regarding the relocation of Roma evicted from such informal settlements. Further sustained efforts are required to fully comply with international standards on forced evictions. The Roma population, and especially Roma women, are the most discriminated against in the labour market. The Roma minority continues to face discrimination, social exclusion and high unemployment. Roma women and children are still frequently subject to family violence, which often goes unreported.

According to the UNHCR, there are around 66.000 **refugees** and 210.000 **internally displaced persons** in Serbia. The number of collective centres fell further from 29 to 24. The programme for supporting municipalities which prepare local action plans for the improvement of the status of refugees and IDPs has continued and some improvement has been recorded concerning the displaced persons housing situation. However, the living conditions of many refugees and internally displaced persons are still difficult. Many are unemployed and live in poverty. Internally displaced persons who do not have personal

documents are in a particularly difficult position as they are not able to exercise their basic rights.

Overall, the legal framework for the protection of minorities is in place and generally respected. Some positive steps were taken to improve the situation of minorities, including the Roma. Regular financial reporting by the national minority councils has been introduced. Additional efforts are needed to ensure effective implementation of minority legislation throughout the territory of Serbia and address known shortcomings. Serbia needs to do more to support the socio-economic development of Sandzak and Presevo, Bujanovac and Medvedja. The Roma, refugees and internally displaced persons continue to face a difficult situation.

2.3. Regional issues and international obligations

There are no outstanding issues in connection with Serbia's compliance with the **Dayton/Paris Peace Agreement**. In the framework of the Special Parallel Relations Agreement between the Republika Srpska and Serbia, a joint session of the governments of Serbia and the Republika Srpska took place in Belgrade in December 2011, leading to the signing of four agreements on internal affairs, IT, the environment and agriculture.

Cooperation with the **International Criminal Tribunal for the former Yugoslavia (ICTY)** continued to be fully satisfactory. Serbia continued to provide smooth and swift access to documents and witnesses, in support of ongoing or planned ICTY trials. The June report of ICTY prosecutor Brammertz regretted the lack of action against the network of aid to ICTY fugitives. The War Crimes Prosecutor started criminal proceedings against an aid network in June 2012. A new trial against a previously identified group of 10 people suspected of aiding Ratko Mladic to evade justice was also restarted. However, Serbia must still further intensify its efforts in the conduct of more in-depth investigations into the fugitive networks in order to achieve visible results.

Domestic processing of *war crimes* continued with a number of new indictments, first-instance judgments and final convictions. Cooperation and exchanges of information with Croatia and EULEX developed in 2012. However, serious problems with witness protection hinder the handling of sensitive cases. A review of the 1990s indictments by military courts in the case of Croatia was completed and findings shared with Croatia. A similar exercise involving discussions with EULEX is ongoing in relation to events in Kosovo. An agreement with Bosnia and Herzegovina on sharing evidence remains to be concluded.

Serbia's policy regarding the **International Criminal Court** is in line with the EU's guiding principles and the EU Common Positions on the integrity of the Rome Statute. Serbia does not have any bilateral immunity agreements.

Serbia made some progress towards a visible and sustainable improvement in relations with **Kosovo**, the key priority set out in the Commission's Opinion on

Serbia's membership application. Serbia continues to contest Kosovo's declaration of independence and to actively oppose recognition by third parties but has participated in a dialogue with Pristina since March 2011. Additional agreements were reached in that dialogue in February 2012 on regional cooperation and representation of Kosovo and on integrated management of border/boundary crossing points (IBM), in the run-up to the March European Council which granted Serbia candidate status. Implementation of these agreements was long delayed. Serbia adopted at first an overly restrictive internal instruction regarding the participation of Serbian delegations in regional meetings and conditions to be observed for its acceptance of Kosovo's participation. Soon after formation of a new government, a revised instruction was adopted in September 2012 which, subject to continued implementation, enables inclusiveness of regional cooperation. Serbia eventually signed the IBM technical protocol in September 2012 but it has yet to be implemented. Other agreements reached in this dialogue between March and September 2011 regarding freedom of movement, civil registries, customs stamps and mutual acceptance of diplomas are being implemented, except for cadastre, on which Kosovo still needs to adopt a law. Some areas are facing technical difficulties, e.g. vehicle insurance and car number plates for the freedom of movement agreement. Gates 1 and 31 remained mostly closed or only partially open, while there has been considerable traffic using unregulated crossing points into and from Serbia.

Serbia was constructive in accepting OSCE facilitation in Kosovo for the holding of its parliamentary and presidential elections there and in not calling local elections in Kosovo. Serbia continued to fund and to maintain its structures, particularly in northern Kosovo, including not only hospitals and schools, but municipal administrations, security services and judicial structures. Cooperation with EULEX has improved. Direct high-level contacts facilitated operational cooperation. Cooperation in combating organised crime has improved but needs to be further developed in regard to some specific cases.

Following the elections and a new leadership in Serbia taking up office, Serbia needs to continue to engage constructively in the next phase of the dialogue in order to achieve further progress towards a visible and sustainable improvement of relations with Kosovo.

Significant progress has been made as regards the **Sarajevo Declaration Process**, which brings together Bosnia and Herzegovina, Croatia, Montenegro and Serbia and aims at finding sustainable solutions for the refugees who were displaced as a result of the armed conflicts in ex-Yugoslavia during the 1990s. The four countries signed a ministerial declaration in November 2011 in Belgrade, renewing their political commitment to bringing this chapter to a close. They agreed on a Regional Housing Programme assisting some 27,000 households or 74,000 individuals. The programme was presented for international donor support at the Sarajevo April 2012 donors' conference, which resulted in some € four countries on all outstanding issues in the process, including data exchange and statistics, civil documentation and pension rights.

The unresolved fate of **missing persons** from the conflicts in the 1990s remains a humanitarian concern in the Western Balkans. As of August 2012, there were still approximately 13,250 people missing from the conflicts in the region. Of these, some 9,550 were related to the conflict in Bosnia and Herzegovina, approximately 1,900 to the conflict in Croatia and over 1,800 to the conflict in Kosovo. In the past year approximately 1,100 remains were identified at regional level. The lack of information on new gravesites and difficulties in identifying exhumed human remains continue to be the key obstacles to solving the remaining cases of missing persons. The Working Group chaired by the ICRC remained the framework within which the Belgrade and Pristina authorities maintained dialogue and exchanged information on persons unaccounted for in relation to the 1998–1999 events in Kosovo. It met twice since September 2011 and held two briefing sessions for the families of the missing, while only 45 cases were solved. Although modest, the progress was achieved mostly owing to the information provided by the Serbian authorities and obtained from international archives. Regarding cooperation between Serbia and Croatia, progress has been limited. No formal meetings of the bilateral Commission on Missing Persons were held. Sustained efforts and enhanced political commitment are needed towards identifying gravesites and clarifying the fate and whereabouts of people still unaccounted for.

Regional cooperation and good neighbourly relations form an essential part of the process of Serbia's moving towards the European Union. In 2012 Serbia held the chair of the South East Europe Cooperation Process (SEECPP), the Migration, Asylum, Refugees Regional Initiative (MARRI), the Adriatic-Ionian Initiative (AII) and the Black Sea Economic Cooperation (BSEC). It continues to play an active part in the Regional Cooperation Council (RCC), the Central European Free Trade Agreement (CEFTA), the Energy Community Treaty and the European Common Aviation Area Agreement. The new RCC Secretary General was appointed following a proposal from Serbia. Serbia supports the RECOM initiative on reconciliation and the Igman Initiative. However, the agreement reached on regional cooperation and the representation of Kosovo in the framework of the Belgrade/Pristina dialogue did not immediately result in either smoother or fully inclusive regional cooperation. Between March and August 2012 Serbia chose to walk out of or boycott meetings that did not strictly follow its own interpretation but eventually applied a more flexible approach from September 2012 onwards.

Serbia has good **bilateral relations with other enlargement countries and with neighbouring EU Member States** overall. Then President Tadic participated in February 2012 in a trilateral summit of Presidents of Serbia, Bosnia and Herzegovina and Croatia at Jahorina and in the summit of Presidents of Serbia, Croatia, Slovakia and the Czech Republic in Prague. A first trilateral meeting of the Ministers of the Interior of Serbia, Montenegro and Bosnia and Herzegovina took place in April 2012. However, some unhelpful statements for reconciliation in the region were made by the new Serbian President, Mr Nikolic,

at the time of his election and taking office, such as that denying the qualification of genocide for the crimes in Srebrenica. Several regional leaders decided not to attend the inauguration of the new president. Serbia needs to continue to make a positive and constructive contribution to regional cooperation and reconciliation.

Relations with *Albania* remained good. Several high-profile bilateral meetings took place. An agreement on veterinary cooperation was signed in April 2012. A readmission agreement and an agreement on reciprocal movement of citizens were also signed.

Relations with *Bosnia and Herzegovina* remained good. The speaker of the Serbian Parliament paid a visit to Bosnia and Herzegovina in December 2011, the Minister of Foreign Affairs of Bosnia and Herzegovina visited Belgrade in March 2012 and the Serbian Prime Minister visited Sarajevo in September 2012. Then President Tadic visited Republika Srpska on several occasions. Border demarcation remains an open issue.

Relations with *Croatia* are stable, regardless of a number of outstanding issues (e.g. border demarcation and missing persons). The two countries are working on a bilateral agreement on war crimes prosecution. There have been no tangible results with regard to border demarcation concerning the Danube. The Serbian government submitted its written pleadings supporting its counter-suit against Croatia before the International Court of Justice on genocide allegations in November 2011. A protocol on the return to Croatia of cultural assets taken during the war in the 1990s was signed, thus resolving an outstanding bilateral issue.

Relations with *the former Yugoslav Republic of Macedonia* continued to be good. There were reciprocal presidential visits in December 2011 and January 2012, which were held in a positive atmosphere. Agreements on travelling conditions and on compensation for health protection were signed. There were no developments regarding the dispute between the Orthodox churches in the two countries.

Relations with *Montenegro* remained good, overall. The Serbian Prime Minister led a senior delegation on a visit to Podgorica in December 2011. The Montenegrin President attended the inauguration of the Serbian President. The two governments signed a number of agreements on sectoral policies, an agreement on cooperation on air traffic control and a protocol on cooperation in resolving the fate of missing persons. There were no developments regarding the dispute between the Orthodox churches in the two countries.

Relations with *Turkey* remained good. The prime ministers met in November 2011 and there were several other reciprocal visits at ministerial level.

Serbia's relations with neighbouring EU Member States *Bulgaria*, *Hungary* and *Romania* remained generally good. Serbia and Romania expanded cooperation on the regulation of the status of their respective national and religious minorities and agreed in March 2012 to a Joint Statement on the Protocol on the second session of the Inter-Governmental Commission on National Minorities. The issue of protection of minorities in Serbia was raised in

different contexts by Romania as being of particular concern. Both countries have started to address this bilateral issue through the mediation of the OSCE High Commissioner on National minorities as well as in the framework of their bilateral joint commission.

Overall, Serbia's international obligations are generally complied with. Serbia continued to fully cooperate with the International Criminal Tribunal for the former Yugoslavia (ICTY). Domestic processing of war crimes cases continued. Serbia maintained a good level of relations with its neighbours and active involvement in regional cooperation, notably by chairing the South East Europe Cooperation Process (SEECp) and a number of other regional initiatives.

Serbia still needs to achieve further progress towards a visible and sustainable improvement in relations with Kosovo, the key priority set out in the Opinion. New results were achieved in the dialogue with Pristina, with agreements in the areas of regional cooperation and representation and integrated management of border/boundary crossing points. However, implementation of these agreements was long delayed. Serbia's interpretation of the agreement on regional cooperation and the representation of Kosovo was eventually clarified soon after the formation of a new government and, based on initial implementation, is no longer hampering the inclusiveness of regional cooperation. Serbia eventually also signed the IBM technical protocol in September 2012 which has yet to be implemented. Implementation of other agreements on freedom of movement, the land registry, civil registries, customs stamps and mutual acceptance of diplomas has overall moved forward. Serbia's new leadership has underlined its commitment to implement all agreements already reached in the dialogue with Pristina as well as to begin tackling the broader political issues. Fulfilment of this commitment is key to moving to the next phase of Serbia's EU integration.

3. ECONOMIC CRITERIA

In examining economic developments in Serbia, the Commission's approach was guided by the conclusions of the European Council in Copenhagen in June 1993, which stated that membership of the Union requires the existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union.

3.1. The existence of a functioning market economy

Economic policy essentials

In January 2012, the government submitted to the European Commission its Economic and Fiscal Programme (EFP) for the period 2012-14. The programme's growth projections are optimistic, especially for 2012, and the plausibility of its targets is constrained by an outdated macroeconomic and fiscal scenario. The programme would have benefited from a more detailed description of policy measures to lead towards the declared objectives — sustainable growth based on exports and investment.

Serbia entered into a precautionary Stand-By Arrangement (SBA) with the International Monetary Fund (IMF) in September 2011. The completion of the first review has been postponed because the 2012 budget deviated from the agreed fiscal programme. After the elections at all levels in May, the new government is facing the challenge to urgently address the increasing fiscal imbalances and present and implement a comprehensive structural reform agenda. The independence of the central bank has been seriously challenged by the adoption of amendments to the Law on the National Bank of Serbia (NBS) in August.

Overall, economic reforms have mostly stalled in the election period. The consensus on the fundamentals of a market economy has been broadly preserved but needs to be reinvigorated in order to improve economic performance and enhance the resilience of the economy.

Macroeconomic stability

In 2011, Serbia's GDP increased by 1.6% in real terms. The pace of recovery slowed down significantly in the second half of the year and economic indicators point to a further deterioration of the economy, which contracted by an estimated 1.3% in the first and 0.6% in the second quarter of 2012. Growth in 2011 was rather narrow-based as key sectors stagnated and even declined. This was particularly visible in manufacturing, real estate and agriculture, which grew by less than one per cent, and in wholesale and retail trade, which fell strongly by a real 5.5% compared to the previous year. Average per capita income in purchasing power standards rose to 35% of the EU average in 2011 from 34% in 2010. *Overall*, the economic recovery proved fragile and the economy has entered another phase of contraction.

Serbia's external position has been affected by the slowdown in the EU economy and in the region. After remaining stable at around 7% of GDP for about two years, the current account deficit increased to around 9% of GDP in 2011 and continued expanding to double-digit levels in the first half of 2012. A major drop in current transfers, mainly private remittances, was the main factor driving the deterioration in 2011, while trade and net factor income deficits remained broadly unchanged. After a peak in 2009-2010, remittances declined to about 7% of GDP, a level closer to their medium-term average. In 2011, both exports and imports of goods and services increased in euro terms by double-digit rates. Still, the trade deficit remained relatively high at 17.2% of GDP and the surge in exports of the last two years has stalled. Export growth decelerated strongly in the last months of 2011 and even turned negative in early 2012, as foreign demand declined and particularly bad weather reduced general economic activity in the country, before rebounding slightly in the second quarter. Imports decelerated too but continued growing by close to 6% in euro terms in the first half of the year. As a result, the trade deficit expanded by 15% over that period.

The inflow of net foreign direct investments was significant in 2011 but turned negative in the first half of 2012. Portfolio and other investment inflows increased last year, on the back of significant government borrowing, while banks and other sectors reduced their liabilities. In September 2011, the government issued a USD 1 billion 10-year Eurobond. Short-term commercial bank debt was reduced by two thirds, pushing the share of total short-term debt to below 3% of the external debt stock. This helped reduce Serbia's total external debt to below 80% of GDP in 2011. In the first half of 2012, banks continued to reduce their foreign liabilities. However, the external debt rose to 80% of GDP by end-July as its valuation increased following significant dinar depreciation in this period. In 2011, the central bank was able to increase significantly its reserves, but these gains were reversed in 2012 as FDI and portfolio investment inflows fell sharply and the bank intervened heavily to support the falling dinar. Nevertheless, by the end of August, foreign exchange reserves remained at a comfortable level, covering about seven months' worth of imports. *Overall*, the external adjustment remains unfinished, with significant and growing trade and current account deficits. External financing has weakened recently but short-term risks are dampened by the still ample foreign exchange reserves and the favourable external debt structure, with a strong prevalence of long-term debt.

In 2011 labour market indicators deteriorated for a third year in a row and worsened further in 2012. The unemployment rate climbed to 25.5% in April, from 23% in 2011 and 19.2% in 2010. Both activity and employment rates declined to their lowest levels in a decade. Most of the unemployment is structural as around three quarters of all unemployed have been without a job for more than a year. The economic growth of last year has not been conducive to employment creation and, according to the labour force survey, the number of employed people decreased by 6%. Employment declined even in sectors which had positive growth rates, implying gains in labour productivity and probably increasing informalities. Public administration, education and health care were a notable exception to this pattern and continued to expand. Employment continued to decline in the first half of 2012, with the number of registered employed falling by 1.5% compared to the same period in the previous year. Gross and net wages increased on average by a nominal 11% in 2011 and stagnated in real terms. Following the unfreezing of public sector salaries in early 2011, real wages have been growing by 2-3% since mid-2011. Their increase accelerated by the end of 2011 and in the first half of 2012, mostly due to base effects and rapid deceleration in inflation. Following a 13% increase in April, the minimum wage has reached almost half of the average wage. *Overall*, labour market conditions deteriorated sharply and unemployment and sustainable employment creation represent a major challenge.

The monetary policy framework remained unchanged and the National Bank of Serbia maintained its commitment to price stability. The amendments to the Law on the National Bank adopted in August 2012 seriously challenged its independence, undermining the confidence in the monetary policy. The central

bank lowered its end-of-the-year inflation target from 4.5% in 2011 to 4% in 2012, still within an unchanged tolerance band of ± 1.5 percentage points. The target was missed by a wide margin throughout 2011, notwithstanding a gradual reduction of annual inflation to 7.0% by end-2011, compared to 10.2% a year before. Inflation was mainly driven by food prices, while energy and transport became the main sources of inflationary pressure in early 2012. As food prices moderated strongly and even declined for a few months in the spring of 2012, inflation continued to fall, reaching 2.7% in April, thus moving below the NBS target band. The central bank reduced its key interest rate, in several steps in line with falling inflation, from a peak of 12.5% in April 2011 to 9.5% in April 2012. Since then, on the back of renewed pressure from food prices, affected by a drought in the summer, inflation accelerated again, reaching 7.9% in August. The exchange rate of the dinar vis-à-vis the euro remained broadly stable in the second half of 2011. However, it has come under pressure since the beginning of 2012. Political uncertainties linked to the general elections and the formation of a new government, weaker net foreign currency inflows and deteriorating budget performance have led to a depreciation of the dinar, and by end September 2012 it had lost about 10% against the euro since the beginning of the year. In view of the high euroisation of the economy and significant pass-through effects to inflation, the central bank intervened heavily on the market. It sold more than € n exchange required reserves in an attempt to stem the fall of the dinar. Moreover, since June the bank increased, in three steps, its main policy interest rate to 10.5%. *Overall*, inflation has been volatile and general uncertainty, weaker net foreign currency inflows, and increasing budget deficits have weakened the dinar.

Fiscal performance has deteriorated. The overall budget deficit increased to 5.0% of GDP in 2011, up from 4.7% a year earlier, and compared to a deficit target of 4.6% of GDP in the revised budget adopted in October 2011. The higher than projected budget deficit resulted from lower economic growth and underperforming revenues, especially in the second half of the year. Almost all revenue categories, with the exception of excise duties (due to rises in effective rates) and corporate income tax, have decreased in real terms. Total revenue fell by 1.5 percentage points to 41.0% of GDP in 2011, while total expenditure decreased by 1.2 percentage points but remained high at 46.0% of GDP. Most of the expenditure categories have declined, with the biggest drops recorded in subsidies, social assistance and capital expenditure. However, spending on wages and pensions remained significant, pointing to a major imbalance in the structure of public expenditure. Following the rapid increase in government debt over the previous few years, interest payments to service the debt went up to 1.4% of GDP.

The original 2012 budget law targeted a reduction in the deficit to 4.25% of GDP. However, due to a strong acceleration in expenditure in the first half of the year, the deficit target had quickly become unattainable. In the first six months, total expenditure grew by a real 8.5%, driving the budget deficit to around 3.3% of GDP, more than 50% higher in comparison with the same period last year. There were strong real increases in capital expenditure, subsidies, purchases of

goods and services and interest payments. In September, the newly-elected government announced a rebalancing of the 2012 budget, targeting an annual deficit of 6.7% of GDP. Most of the adjustment is expected to come from the revenue side, to be coupled with expected savings mainly due to lower indexations of wages and pensions. However, expenditure pressures related to additional spending on pensions, agricultural subsidies and support for some of the state-owned banks put at risk the achievement of the revised, and not very ambitious, 2012 deficit target.

Government debt continued to rise rapidly in 2012, driven both by the widening deficit and the depreciation of the dinar. It approached 55% of GDP by the end of July, far above the legally binding threshold of 45% of GDP, requiring the government to present a special programme to bring the debt back below 45% of GDP over the medium term. The deteriorating fiscal performance, among other factors, triggered a downgrade of Serbia's long-term sovereign credit rating in August. *Overall*, the budget deficit in 2011 remained high for a third year in a row and continued to increase at a rapid pace in 2012. Government debt went above the legally binding threshold already at the end of 2011 and continued to increase in 2012. The adoption and implementation of urgent and decisive consolidation measures, backed by systemic reforms of the public sector in order to restore public finance sustainability, remain a key challenge.

After several years of loose fiscal policy, fiscal space to cushion further shocks in the economy has been limited and fiscal sustainability is increasingly challenged. Delays in structural reforms are also weighing on the budget and the efficiency of policy responses. High budget deficits have constrained the effectiveness of the macroeconomic policy mix and the main burden of adjustment fell on monetary policy. Moreover, monetary policy continues to be restricted by the high degree of euroisation of the economy, which complicates the attainment of official objectives of inflation targeting and preserving financial stability. *Overall*, the policy mix is relatively imbalanced. Loose fiscal policy and a number of structural weaknesses overburden monetary policy.

Interplay of market forces

Price liberalisation has stalled and has even been partially reversed. The prices of about 22% of the goods and services in the consumer price index basket are administered and, for some of the goods, are kept below cost-recovery levels. The state has introduced indirect price control for certain groups of goods (basic foodstuffs). A government decree, in place until the end of 2012, caps retail trade margins for these products at 10%. The government has continued to control prices of public utilities directly, but also indirectly by setting a limit on increases in the prices of communal and public city transport services which are under the control of the local authorities. *Overall*, the state control over prices continues to be substantial and price liberalisation has stalled.

State influence in the economy remains high, due also to the predominant share of state ownership in major sectors of the Serbian economy such as energy (electricity and gas), railway and air transport and telecommunications. State-owned companies, which are overstaffed in general, employ more than 10% of all employees in legal entities. They make a loss of around € 1 billion a year or about 40% of all losses in the economy. Privatisation of socially-owned companies has practically come to a halt. In 2011 only two enterprises were sold through a public tender (with sales receipts amounting to € 1.0 million and investment commitments of € 4.3 million) and two enterprises were sold through auctions. As a result of delayed privatisation, cancellation of contracts or re-nationalisation, the state still has control over a number of large companies in the manufacturing sector. Currently, the portfolio of the Privatisation Agency consists of 408 companies. There are 171 companies under a restructuring procedure and most of the remaining firms are to be sold through bankruptcy or liquidation.

In early 2012, the majority state-owned Telecom Srbija bought back 20% of its shares from a foreign investor. With this buy-back, the 1997 privatisation of 49% of Telecom Srbija has been completely reversed (29% had been bought back already in 2003). In April, the Serbian government decided to distribute 6.94% of the shares in Telecom Srbija to the company's current and former employees, while another 15% was offered to all citizens. In another privatisation reversal, in February 2012, the Serbian government bought back from US Steel the ailing steel mill in Smederevo for a symbolic USD 1. Later, production at the mill, one of Serbia's main exporters and employers, has been temporarily suspended. The steel mill has been running up large losses in the last few years and, until the government is able to re-privatise the company, it will have to secure at least the maintenance costs, adding to government liabilities. *Overall*, in a difficult economic environment, the privatisation process has been very slow and even partially reversed. Sustaining competitive markets remains a key challenge.

Market entry and exit

Some steps have been taken to facilitate market entry. The 'one-stop shop' has further shortened the registration procedure, which now takes only two days on average (five days is still the legal maximum, with the principle of 'silent consent' in place). The registration fee stands at € 45 and the required capital for setting up a limited liability company has been reduced from € 500 to less than € 1. The setting up of construction permits and the process of dealing with construction permits and land remains costly and lengthy. Regulatory reform (the 'regulatory guillotine') is ongoing, although it has slowed lately. In an attempt to revive it, a new Strategy for regulatory reform 2011-2014 was adopted in late 2011.

The Law on Bankruptcy has introduced automatic bankruptcy for companies if their accounts are blocked for a certain period and, since the beginning of 2012, this period has been reduced from two to one year. Under the Law, the National Bank of Serbia is required to provide the commercial courts with information about these companies, so that bankruptcy proceedings can be launched. In the first half of 2012,

it notified the courts about 11,231 companies with blocked accounts — about 50% more than in the same period the previous year. *Overall*, some steps have been made to simplify and speed up market entry, but red tape and difficulties in obtaining construction permits remain important obstacles. The bankruptcy procedure for companies that have been over-indebted has speeded up.

Legal system

The establishment of a real estate registry and a digital registration system has been completed. The new system will be able to provide quick and accurate information about real estate ownership, and this should facilitate contracts and investment decisions. Restitution legislation has been adopted but its enforcement remains to be tested. The Law on Planning and Construction and its amendments have led to differences in interpretation and thus in implementation at municipal level, which increases uncertainties for investors.

The uneven execution of laws, slow or non-existent enforcement, and proliferation of different administrative fees and charges increase the uncertainty and the cost of doing business. Moreover, the informal economy remains strong and is a major hindrance to fair competition and business development. *Overall*, legal predictability and enforcement of court decisions remain weak. Corruption and unclear property rights continue to hamper economic activities.

Financial sector development

The Serbian financial system is dominated by the banking sector, which had a 92% share of total assets in 2011. A total of 33 banks are operating in the country, unchanged from a year earlier. By the end of March 2012, foreign ownership had risen to about 74% of the banking sector and 21 banks operating in Serbia are owned by foreign entities. The five largest banks accounted for 47% of the total assets of the sector. There are nine state-owned banks, holding about a 19% market share, while the market share of domestic private banks is small at around 7%. Since the end of 2011, banking sector assets increased by 8.5%, accounting for approximately 94% of GDP by the end of July.

Capitalisation of the banking sector declined but still remains high. The average capital adequacy ratio stood at 17.3% in March 2012, well above the prescribed minimum of 12%. Deposits, of which over 75% are denominated in foreign currency, represent around 57% of the total liabilities of the banking sector. Similarly, loans account for some 60% of banking sector assets. About 70% of the loans are denominated in or linked to a foreign currency, predominantly the euro. More than half of all loans are granted to the corporate sector, while close to a third are extended to households. The quality of bank assets worsened, with the gross non-performing loans ratio reaching 20.4%, from 17.1% a year before. Banks profitability deteriorated in the course of 2011 and the return on equity decreased to just 0.2%. However, this negative development was mainly caused by the significant loss accumulated by Agrobanka. The bank

has been put in receivership in the end of 2011, after the central bank established that the level of the bank's capital is not consistent with the degree of risk taken by the bank. The financial situation of Agrobanka did not improve and, in May, the Central Bank revoked its licence and granted an operating licence to the newly-established Nova Agrobanka, which took over all the liabilities and part of the receivables of the old bank. The new bank has been partially recapitalised by the Deposit insurance agency and the government. Following the failure of Agrobanka, in August the central bank took additional measures to increase its supervision of the banking system, focusing in particular on banks with significant share of custody accounts and state ownership. *Overall*, the banking sector remained well-capitalised and liquid, but a weakening economy and depreciating dinar point to a growing risk of further deterioration in the quality of the loan portfolio. Bank supervision has been tightened, following the discovery of significant losses in one of the small banks.

The main index BelexLine of the Belgrade stock exchange fell by around 20% in 2011. This negative trend continued in the first nine months of 2012 and the index lost a further 10.6%. At the end of 2011, there were 28 insurance companies operating in Serbia, up from 26 a year earlier. Altogether 21 of them are in majority foreign ownership, while seven rely on predominantly domestic capital. The insurance sector's share in the total financial sector increased slightly, to 4.4% in 2011. The annual growth of premiums stood at a modest 1.4%, down from a 5.6% rise in 2010. The market was dominated by the non-life insurance segment, which accounted for 83% of the total. *Overall*, the role of the non-banking financial sector remained marginal.

3.2. The capacity to cope with competitive pressure and market forces within the Union

Existence of a functioning market economy

Economic recovery has stalled and macroeconomic stability has weakened as domestic and external imbalances increased. Delayed reforms and the economic slowdown have exposed and aggravated structural weaknesses, such as low employment and volatility in prices and exchange rates. State presence and influence in the economy remains significant and has even increased. The private sector continued facing major obstacles. Key laws are in place, but the rule of law remains weak. *Overall*, the functioning of market mechanisms is hampered by distortions, excessive state involvement and legal uncertainty.

Human and physical capital

At present, there is still a large gap between demand for and supply of skilled workforce — with some professions oversupplied and others lacking. Enrolment in education in both primary and secondary schools is high and is increasing over time. The number of people with higher education is low (currently 6.5 % of the population) but is envisaged to increase sharply in the course of this decade

according to the draft education strategy for the period until 2020. Important elements of the strategy are the introduction of mandatory secondary education and the plans to reform vocational training, bringing it closer to the needs of the labour market. To back the achievement of its goals, the strategy envisages an increase in public spending on education to 6% of GDP in 2020, up from 4.2% in 2011. *Overall*, further steps remain to be taken to implement a strategy of reforming the education and training system in order to improve its performance and respond better to labour market needs.

Serbia continues to need significant investments to improve and upgrade its physical infrastructure. Government investments have been constrained by a difficult budgetary situation and declined to 3.5% of GDP. Nevertheless, works on major transport corridors (such as pan-European Corridor X) progressed, albeit slowly, but investments outside the main corridors are lagging behind. Energy efficiency continues to be low and energy infrastructure, in particular electricity generation and distribution, needs further investments. Net FDI more than doubled in 2011, reaching 5.8% of GDP. A large share of the inflows related to a single non-greenfield investment in the retail sector and part of the remaining inflow has benefited from budget subsidies. Besides trade, the other two sectors which attracted most of the FDI were manufacturing and financial and insurance activities. *Overall*, the physical infrastructure needs large investments. Government investments have been constrained by an increasing budget deficit and FDI has been channelled mostly to non-tradable sectors.

Sectoral and enterprise structure

The shares of agriculture and industry edged up slightly in 2011, reaching 10.4% and 27.7% of total value added respectively, while the share of services fell from 63.0% to 61.9%. Employment declined across the three sectors but the fall was more marked in agriculture — its share in total employment dropped from 21.5% in April 2011 to 20.4% in April 2012. The share of industry remained broadly unchanged and employment in services increased to 53.4% of the total. Weak tax and expenditure policies and poor law enforcement, including in the fight against corruption, continue fuelling a sizeable informal sector. *Overall*, the economy continued to be dominated by services and the share of agriculture remained significant. The informal sector is a significant challenge.

State influence on competitiveness

State subsidies reported in 2011 were 6% higher than in 2010, representing 2.6% of GDP. Of the total State aid granted in 2011, only 16.3% was in the form of horizontal aid, 41.1% was for regional aid, 22.1% was sectoral aid, and 20.5% went for agriculture. There was barely any aid to training and to research and development. Most of the aid was given in subsidies (close to 60%) and as tax incentives (31% of total). The state-controlled monopolistic structures remain in a number of sectors (e.g. energy, transport, infrastructure, postal services,

telecommunications, broadcasting, agriculture and the environment) and the state continued to subsidise heavily the transport sector, which received almost a fifth of all aid. *Overall*, the state continues to substantially influence competitiveness by providing significant and wide-ranging forms of State aid.

Economic integration with the EU

The EU remains Serbia's main trading partner, accounting for 57.7% of the country's total exports and 55.6% of its total imports in 2011. While the share of exports to the EU has increased somewhat, the share of imports has decreased slightly. The CEFTA countries accounted for 14% of Serbia's trade in 2011, having declined from 14.8% in 2010. The share of net FDI inflows from the EU in total net FDI inflows reached 88% in 2011. Real gross wage growth, at 0.3% in 2011, was considerably smaller than average labour productivity growth, which translated into a fall in real unit labour costs. In real effective terms (deflated by inflation), the dinar appreciated by 4.4% in 2011. However, by end of July 2012, the real effective exchange rate of the dinar weakened by 8%. *Overall*, trade integration with the EU remained high.

4. ABILITY TO TAKE ON THE OBLIGATIONS OF MEMBERSHIP

This section examines Serbia's ability to take on the obligations of membership — that is, the *acquis* as expressed in the Treaties, the secondary legislation and the policies of the Union. It also analyses Serbia's administrative capacity to implement the *acquis*. The analysis is structured in accordance with the list of 33 *acquis* chapters. In each sector, the Commission's assessment covers progress achieved during the reporting period and summarises the country's overall level of preparations.

4.1. Chapter 1: Free movement of goods

No progress can be reported regarding **general principles**. There was no further alignment of Serbia's legislation with Articles 34 to 36 of the Treaty on the Functioning of the European Union and the relevant case law of the European Court of Justice.

There was little progress in relation to **horizontal measures**. The legal framework along the the EU principles and the horizontal *acquis* has been adopted. However, the full alignment of the horizontal legislation remains to be achieved. The overall framework also needs to be completed with the adoption of the remaining implementing legislation on metrology. Two implementing regulations in the metrology field were adopted in June 2012: on emergency measurements and on conditions for performing the verification measuring instruments. The administrative capacity needs improvement, especially regarding further training in the field of metrology. The long-term Quality Infrastructure Strategy for relevant horizontal institutions still needs to be adopted.

Good progress was achieved in the area of *standardisation*. By September 2012, the Institute for Standardisation of Serbia (ISS) had approximately adopted 80% of the European standards (ENs) required for membership of the European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (CENELEC), which the Institute will apply to join in 2013. The total number of standards applied as national ones stood at 18.294; the number of CEN standards applied stood at 11.875, CENELEC standards at 5.231 and ETSI standards at 260, in total 17.366. The number of withdrawn conflicting Serbian standards was 6.395. The ISS has 250 technical committees. The number of full-time employees has increased from 62 to 64. The ISS was certified for information security management systems and for quality management systems to EN ISO standards. The overall administrative capacity of the Institute has improved.

No particular progress can be reported in the area of *conformity assessment*.

Good progress can be reported in the field of *accreditation*. The Accreditation Body of Serbia (ABS) became a full member of the European cooperation for Accreditation (EA) in May 2012, of the International Accreditation Forum (IAF) in December 2011 and of the International Laboratory Accreditation Cooperation (ILAC) in May 2012. It has received the signatory status of the EA Multilateral Agreement in the fields of testing laboratories, calibration laboratories, medical laboratories, inspection bodies and certification bodies for certifying products. It has also broadened its scope of accreditation. The ABS currently has 35 full-time staff members but needs additional qualified human resources. At the end of the reporting period Serbia had 473 accredited conformity assessment bodies.

Little progress can be reported in the area of *metrology*. Serbia still needs to align its legislation to the EU *acquis* on pre-packaging and units for measurements. Overall framework laws are in place, but implementing legislation remains to be adopted. Pursuant to the Law on Metrology, the Directorate for Measures and Precious Metals (DMDM) of the Ministry of Economic Affairs and Regional Development offers time distribution services over the internet as Serbia's national time calibration reference. The Directorate has also increased the number of calibration and measurement capabilities services which are published in the database of the Bureau for Weights and Measurements (BIPM). The Directorate has increased the number of its employees from 120 to 126.

Progress can be reported in the area of *market surveillance*. The adoption of the framework market surveillance law brought this area closer to the 2008 horizontal *acquis*. A new contact point has been designated for the EU's rapid alert system RAPEX. Cooperation amongst different market inspectorate services progressed with the creation of a joint body for the surveillance of chemicals, comprising representatives of the Market, Sanitary and Environmental Protection Inspectorates, and the Chemicals Agency. The Product Safety Council was established and became fully operational as of autumn 2011, comprising representatives of the authorities, chambers of commerce and consumer

protection groups. However, market surveillance remains highly fragmented and needs consolidation. Furthermore the Law on General Product Safety needs to be further aligned with the relevant EU *acquis*.

Little progress can be reported in the field of **'Old Approach' product legislation**. Serbia still needs to align its legislation with the *acquis* e.g. on pre-packaging, units for measurements and emissions of pollutants from non-road engines. The alignment of crystal glass and textiles and footwear legislation has been postponed until 2013 and 2014 respectively.

Concerning **'New and Global Approach' product legislation**, progress was made. Serbia has to further align its legislation, e.g. in the field of field of measurement instruments, non-automatic weighing instruments, toy safety, construction products, cableway installations, recreational craft and noise emissions from outdoor equipment.

No progress can be reported concerning **procedural measures**. Serbian legislation remains to be aligned with the *acquis* in the field of civil firearms and of the return of cultural objects unlawfully removed from the territory of an EU Member State

Conclusion

Some progress was made in the area of free movement of goods. EU standards continue to be adopted and the Serbian accreditation body became a full member of the EA. Serbia has progressed in the adoption of product legislation. Market surveillance remains highly fragmented. Implementation of the legislation, administrative capacity and coordination among institutions need to be enhanced. Overall, preparations in the area of free movement of goods are moderately advanced.

4.2. Chapter 2: Freedom of movement for workers

There has been no progress in the area of **access to the labour market**. The Law on Employment of Foreigners remains to be adopted by the parliament.

Little progress can be reported as regards future participation in the **EURES** (European Employment Services) network. A national vacancy database has not been established yet.

There has been some progress as regards **coordination of social security systems**. An agreement with Bulgaria was approved in the parliament in December 2011. Agreements were signed with Austria in January 2012 and with Slovakia in March 2012. An electronic system of exchange of information has been established among ex-Yugoslav republics, although for the time being the system operates with Slovenia only. However, public administration resources have remained limited and prevented any development in strengthening the capacity of social security institutions.

No developments were reported in the area of the **European Health Insurance Card**.

Conclusion

There has been some progress in the area of freedom of movement for workers, specifically related to the coordination of social security systems. Further improvements are nevertheless needed and preparations for future participation in EURES must be stepped up. Overall, preparations in this area are moderately advanced.

4.3. Chapter 3: Right of establishment and freedom to provide services

With regard to the **right of establishment**, some progress was made, in particular in relation to registration in the Register of business entities. (*See Chapter 6 — Company law*)

There has been no progress regarding the **freedom to provide cross-border services**. Serbia needs to align its legislation with the Services Directive. The capacity of the administration in charge of the service sector was downsized.

No progress can be reported in the field of **postal services**. The public postal operator remains to be corporatised and its operational processes modernised. The administrative capacity of the Regulatory Agency (RAPUS) needs to be reinforced, in particular its ability to supervise implementation of the regulatory framework.

There was no progress in the area of **mutual recognition of professional qualifications**. Serbia still needs to adopt legislation on the recognition of qualifications for regulated professions.

Conclusion

Little progress was made in the area of the right of establishment and freedom to provide services. Efforts need to be made to align the legislation on the freedom to provide services and also to boost administrative capacity and interinstitutional cooperation. Full alignment with EU postal services legislation remains to be achieved. Overall, in the area of the right of establishment and freedom to provide services, Serbia is moderately advanced.

4.4. Chapter 4: Free movement of capital

Serbia made progress in the area of **capital movement**, with the adoption by the National Bank of Serbia (NBS) of implementing legislation based on the amendments to the May 2011 Law on Foreign Exchange Operations. These decisions further liberalise several types of international transactions. The obligation to notify the Ministry of Economic Affairs when investing abroad was abolished in February 2012.

However, several restrictions remain, including on short-term capital operations and the acquisition of real estate. Agricultural land cannot be owned by foreign individuals or legal entities. Construction land — and properties on such land — can be owned by foreign individuals or legal entities, but only provided that there is reciprocity with the purchaser's home country.

There was no progress in the area of **payment systems**. Serbian legislation largely remains to be aligned with the *acquis*.

There was some progress in the **fight against money laundering**. The Administration for Prevention of Money Laundering (APML) takes part in the Egmont Group and Moneyval meetings on a regular basis. It signed a cooperation agreement in December 2011 with the Securities Commission on the exchange of information in the fight against money laundering and terrorist financing. It also signed memoranda of understanding with the financial intelligence units of Hungary and Estonia in November and December 2011 respectively, and with those of Australia, Belarus, Finland and Columbia in July 2012. The APML adopted guidelines for assessing the risk of money laundering and terrorist financing. It introduced a new internal organisation to optimise its analytical and supervisory capacities in March 2012. However, its capacity has not been reinforced. Its staff numbers are stagnating, no adequate business premises have been provided and the plan to set up a training centre has not yet been implemented.

Conclusion

There was some progress in the area of capital movements, albeit focused on the liberalisation of capital transactions. Further efforts are needed to align the legislation for short-term capital operations, real estate and payment systems with the *acquis*. There has been some progress in the fight against money laundering. In this area, implementation needs to be stepped up. Overall, Serbia's alignment in the area of the free movement of capital is moderately advanced.

4.5. Chapter 5: Public procurement

Some progress was achieved as regards the **general principles**. The Law on Public Private Partnerships (PPPs) and Concessions was adopted in November 2011. It establishes the PPP as a legal instrument for the first time in the Serbian legal system. The law also establishes an intergovernmental Commission for Public Private Partnerships (CPPP) as a collective advisory body. However, the government strategy for upgrading the public procurement system largely remains to be implemented.

There was limited progress regarding the **award of public contracts**. In fulfilling its supervisory role, the Public Procurement Office (PPO) detected irregularities in negotiated procedures representing a total of more than € 28 million in 2011 and € 68 million in the first half of 2012. The CPPP started operating in March 2012 and is supported by a technical secretariat consisting of

three employees of the Ministry of Finance and Economy. However, implementing legislation is still missing, and the staff of the Ministry of Finance and Economy needs to be trained on the award of PPP contracts. The Department for Public Procurement in the Ministry of Economy and Finance, which is responsible for legislative initiatives, had its staff increased from 2 to 6 employees.

However, the administrative capacity of the Budgetary Inspectorate of the Ministry of Economy and Finance, in charge of monitoring application of the public procurement law, needs to be strengthened so that it can effectively follow up on the many irregularities detected. In general, tendering authorities do not take appropriate action often enough in cases of established misuse of public money. Overall, institutional cooperation in this field remains weak and needs to be strengthened.

Good progress was made with regard to the **remedies** system. The Republic Commission for the Protection of Rights in Public Procurement Procedure ('Republic Commission'), which is the second-instance body in the procedure for reviewing the award of public contracts, has considerably strengthened its administrative and enforcement capacities. Its staff increased from 9 to 38 employees and it has moved to new, well-equipped offices. With the entry into force of the Law on PPPs and Concessions, the Republic Commission has been given additional responsibility to decide on complaints in relation to the award of PPPs and concessions. The monitoring and scrutinising of implementation of the Republic Commission's decisions and the notification of cases of non-compliance to the relevant state institutions has started. The Republic Commission has started to act more transparently by making its decisions public and has set up a new website. However, in general, the work of the Republic Commission is still at an early stage. It needs to build a solid enforcement record, by further ensuring that its decisions are implemented.

Conclusion

There has been some progress in the field of public procurement, particularly in the area of public-private partnerships. Serbia needs to keep up steady efforts to implement its legislative framework on public procurement, and in particular to avoid irregularities in the use of the negotiated procedure. Effective coordination between the main stakeholders, including audit and judicial institutions, needs to be ensured. The enforcement record and administrative capacities of the Budgetary Inspection of the Ministry of Finance in charge of supervision of public procurement needs to be substantially strengthened. Overall, alignment in the area of public procurement is moderately advanced.

4.6. Chapter 6: Company law

Good progress was made in the area of **company law**. A package of new laws and amendments adopted in December 2011 regulates the establishment,

organisation and closure of business entities along with their registration and the procedure followed by the Business Registers Agency. These new provisions substantially lower the amounts of capital necessary to establish limited liability companies. The new legislation is meant to simplify the business environment and to further align with EU legislation, thereby facilitating business start-ups.

The Business Registers Agency continues to operate the Register of business entities efficiently.

There was no progress reported in the areas of **corporate accounting and auditing**. Full alignment with the Eighth Company Law Directive and with the *acquis* in the area of independent public oversight, quality assurance and investigations remains to be achieved.

Conclusion

Good progress was made in the area of company law, with the entry into force of the new law in February 2012 and the adoption of several amendments to this law. For corporate accounting and auditing, efforts should be stepped up in the areas of independent public oversight, quality assurance and investigations. Overall, alignment in the area of company law is well advanced.

4.7. Chapter 7: Intellectual property law

Good progress was made in the area of **copyright and neighbouring rights**. The Law on Copyright and Related Rights was amended in December 2011 with a view to further aligning it with the *acquis*. Implementing legislation for the Law on Optical Discs was adopted in March 2012 with the aim of reducing the high piracy rate. The Commission for Copyright and Related Rights started taking decisions on tariffs in cases where no agreements were reached with collective rights management organisations.

Good progress has also been made in relation to the legislative framework on **industrial property rights**. The Law on Protection of Trade Secrets was adopted in September 2011. The Law on Protection of Plant Breeders' Rights was amended in November 2011, allowing Serbia to start the procedure for joining the International Union for the Protection of New Varieties of Plants (UPOV). A new Law on Patents was adopted in December 2011. It further aligns with the *acquis*. However, the 2009 Law on the Protection of Topographies of Integrated Circuits remains to be further aligned with the *acquis*.

Some progress was registered in the field of **enforcement**. The Intellectual Property Office (IPO) conducted a large number of training events for government enforcement agencies and organised promotional activities for stakeholders. No solution has yet been found to the issue of the long-term financial sustainability of the IPO. The Customs Administration of Serbia developed its IT capacity for use in IPR protection. The level of counterfeit goods that it has seized has gone up. The administrative fee for submitting a request for intellectual property rights enforcement has been revoked, leading to an increase

in requests. In the course of 2011, the Tax Administration was involved in launching three registers (of producers, of distributors and of software) in collaboration with IPR holders, with a view to facilitating its work and its checks. The Market Inspectorate of the Ministry of Foreign and Domestic Trade and Telecommunications was given the use of twelve warehouses across Serbia for the storage of counterfeit and pirated goods. The number of goods that it confiscated in the first half of 2012 significantly increased with respect to 2011.

However, the number of checks carried out by the Tax Administration has declined. A formal coordination mechanism between the institutions in charge of IPR protection is still lacking. The participation of economic operators and consumers in preventing counterfeiting and piracy remains limited.

Regarding judicial protection of intellectual property rights, the Law on Territorial Organisation of Courts in Serbia still needs to be amended to allow judges to specialise and IPR cases to be concentrated in a limited number of courts. Further specialisation of prosecutors, judges and court panels handling IPR cases remains to be ensured.

Conclusion

Good progress was made in the alignment of Serbian intellectual property law with the *acquis*. The national IPR strategy 2011-2015 is being implemented and capacity has been strengthened. A formal coordination and cooperation mechanism between the institutions in charge of IPR protection still needs to be established. Specialisation of prosecutors, judges and court panels handling IPR cases needs to be ensured. Overall, alignment in the area of intellectual property law is advanced.

4.8. Chapter 8: Competition

Some progress can be reported in the area of **anti-trust and mergers**. The implementing legislation was adopted for applying the competition rules to associations of undertakings and for detecting bid rigging in public procurement procedures. The Commission for the Protection of Competition (CPC) started to apply the leniency programme for parties involved in cartels. The CPC adopted five decisions on restrictive agreements and one decision on abuse of a dominant position. It took five decisions on fines. It approved 73 mergers under the summary procedure and carried out one investigation in which it prohibited a concentration in the sugar production sector. This negative merger decision, as well as a decision on abuse of dominance adopted in 2009, were overturned on appeal on procedural grounds and turned back to the CPC in order to take a new decision. The CPC completed a sector analysis of the oil market in October 2011 and initiated one in the milk sector in August 2012.

The CPC improved its competences in administrative and procedural law. It strengthened its capacity by hiring three economists. International cooperation with a number of peer competition authorities has been established. The CPC has

also concluded cooperation agreements with sector regulators, such as RATEL and the Energy Agency.

However, the Law on Competition still contains shortcomings that need to be addressed in the future, not least the short three-year statutory limitation period and the fact that the CPC must pay interest on fines overturned on appeal. The timeframe for in-depth merger investigations could also be extended. Also, sector-specific decrees on price regulation adopted without prior consultation with the CPC may undermine the effectiveness of competition policy in Serbia. The financial plan of the CPC for 2012 was adopted by the government in November 2011. The increase in staff, foreseen in this plan, has however not materialised, due to a lack of office space. With 31 employees, the CPC's capacity remains insufficient. The capacity of the judiciary to assess complex competition cases also needs to be strengthened. Capacity building and advocacy activities among the judiciary as well as with other state bodies that have limited knowledge and awareness of the benefits of competition policy must be stepped up.

There has been some progress in the area of **State aid**. A first comprehensive State aid report was adopted in September 2011. In addition, the government adopted the list of State aid schemes that need to be aligned with the *acquis*. A decree on the rules for granting State aid was amended in December 2011 to broaden its scope to public enterprises. The number of notified State aid measures increased substantially, thanks to increased awareness among relevant State aid grantors at all levels of government. The Commission on State Aid Control (CSAC) took 148 decisions, including 78 conclusions in the *ex post* control procedure. Eight *ex post* control procedures were launched *ex officio*.

However, further efforts are needed to make aid grantors notify their projects before State aid is disbursed and to ensure the timely alignment of existing State aid schemes. The Commission's enforcement record needs to be strengthened and its operational independence is still to be demonstrated. Cooperation and coordination needs to be stepped up between the CSAC and all bodies granting State aid.

Concerning liberalisation of specific sectors, a number of Serbian undertakings continue to enjoy, *de facto* or *de jure*, special or exclusive rights, e.g. in the fields of energy, transport, infrastructure, postal services, telecommunication services, broadcasting, agriculture and the environment. Additional efforts need to be made towards market liberalisation in line with the *acquis*.

Conclusion

Some progress was made in the area of competition. The competition authority strengthened its capacity and the State aid authority developed its enforcement record. The record in *ex ante* notifications of State aid measures should be improved. In both the anti-trust and mergers and State aid fields,

additional advocacy measures are needed. Overall, alignment in the area of competition policy is moderately advanced.

4.9. Chapter 9: Financial services

Some progress can be reported in the area of **banks and financial conglomerates**. The preparations for full implementation of Basel II standards have advanced. New decisions on harmonising bank capital adequacy, risk management rules and bank data disclosure with Basel II were implemented by the National Bank of Serbia (NBS) in December 2011. The decision on the classification of bank balance sheet assets and off-balance sheet items was also implemented in December 2011; it aims to ease the burden of supervisory provisions and align with the Basel II regulatory framework. Strengthening of the supervisory capacity of the NBS is ongoing. The amendments to the Law on the NBS adopted in August 2012 will result in the establishment of a specific Authority for the Supervision of Financial Institutions (which include banks, insurance companies and voluntary pension funds), within the NBS. However, the Basel III requirements have not yet been implemented and alignment with the latest *acquis* on deposit guarantees remains to be achieved.

There was little progress in the area of **insurances and occupational pensions**. Some amendments to the Law on Compulsory Traffic Insurance, which were adopted in October and December 2011, have contributed to further alignment. The amendment to the Insurance Law, which was adopted in December 2011, postponed the separation of composite insurance companies until December 2012. The administrative capacity of the NBS' Insurance Supervision Department was reinforced by the hiring of two new employees. The NBS signed a new memorandum of cooperation with the Insurance Supervision Agency of Slovenia in October 2011. It carried out nine on-site inspections in eight insurance companies in 2011 and three in the first half of 2012. Nine measures requiring the elimination of irregularities were imposed. Alignment with the Solvency II Directive and the rules on occupational pension funds remains to be achieved.

There was no progress in further aligning with the *acquis* in the area of **financial market infrastructure**.

Some progress can be reported in the area of **securities markets and investment services**. The Securities Commission adopted 22 pieces of implementing legislation in order to regulate more precisely the capital market legal framework. Amendments to the Law on Takeovers of Joint-stock Companies entered into force in February 2012. They aim to further align the new Serbian Capital Market Law and Company Law with the *acquis*. The Securities Commission adopted a new statute in September 2011 which defines its organisation, competences and procedures. Its capacity to file criminal charges was extended. It signed a declaration of cooperation with securities regulatory authorities from Bosnia and Herzegovina, Croatia, the former Yugoslav Republic

of Macedonia, Montenegro and Slovenia in November 2011. However, there has been no progress in further aligning with the *acquis* on rating agencies and on undertakings for collective investment in transferable securities (UCITS).

Conclusion

Some progress was made in the area of financial services. Steps were taken towards implementation of the Basel II requirements. Serbian legislation must be further aligned with the *acquis* and effectively implemented in the medium term. Overall, alignment in the area of financial services is moderately advanced.

4.10. Chapter 10: Information society and media

Some progress can be reported in the areas of **electronic communications and information and communications technology (ICT)**. The General Authorisation Regime applies to all types of communication services since January 2012. The National Regulatory Agency (RATEL) completed the first round of market analysis in 2011 and adopted the specific regulatory obligations for operators with significant market power in November 2011. These cover the seven markets listed in the Commission's 2008 Recommendation and two additional retail markets. RATEL acquired observer status at the Body of European Regulators for Electronic Communications in April 2012. At the end of 2011, the overall broadband penetration per population stood at 13.4% (EU average being 27.7%). Preparations for introduction of the emergency number 112 have started. However, the implementation of laws and competitive safeguards generally lags behind. Decision-making is often not transparent, creating uncertainty for market players. Specialised expertise of judges handling telecom cases needs to be developed. The radio spectrum provisions remain to be aligned with the EU regulatory framework. The parliament adopted in December 2011 a Law on Cinematography directing 10% of RATEL's revenues to 'national cinematography', thereby constraining its financial independence. The capacity of the units responsible for ICT and digital administration within the Ministry of Culture, Media and Information Society remains insufficient.

In the field of **information society services**, little progress was achieved. A National Broadband Council was set up in April 2012. As regards e-government, in spite of the recent improvements, the overall IT capacity in the country needs to be strengthened, especially at local level. However, the sequencing of transition to digital phases remains to be determined. There is a major digital divide in electronic access and a broadband strategy needs to be finalised. Further alignment with the conditional access and e-commerce EU legislation is needed.

There was little progress as regards **audiovisual policy**, particularly in the implementation of the Media Strategy which aims at aligning with the EU *acquis* in this area. The working groups for drafting the new Law on Public Information and Law on Public Service Broadcasting were set up. The Action Plan for the implementation of the Media Strategy, covering the issue of State aid to the media

and its alignment with the *acquis* as of 1 January 2012, remains to be implemented. The government adopted in March 2012 amendments to the Strategy for switchover from analogue to digital broadcasting of radio and television programmes, shifting from a single switchover date, originally scheduled for 4 April 2012, to a phased approach so that the final analogue TV switch-off date is set on 17 June 2015. The first digital network was launched in April 2012 with a digital test signal accessible to 50% of the territory across Serbia, with national broadcasting without analogue signal switch-off. Switchover from analogue to digital signal remains to be fully ensured. Provisions allowing for the financing of certain media from the State budget remain to be brought into line with the EU *acquis* as it constitutes State aid.

Conclusion

Little progress can be noted in the area of information society and media. Regarding electronic communications, the general authorisation regime for telecom providers came into force in full and some key competitive safeguards were introduced. The switchover from analogue to digital broadcasting has begun. However, the telecom regulators' financial independence needs to be improved and Serbia's legislative framework remains to be aligned with the *acquis*. Overall, alignment with the *acquis* in the area of information society and media is moderately advanced.

4.11. Chapter 11: Agriculture and rural development

Limited progress was made regarding **horizontal issues**. The 2012 agricultural budget was increased by 19% compared to the previous year. Direct aid payments account for more than 90% of the support measures. There was an increase in the allocation for rural development measures in the budget. The livestock sector continues to benefit from headage payments and milk subsidies. These are linked to compliance by producers with legislation on animal identification, registration and movement control and participation in national animal health measures. Direct payments will gradually need to be brought into line with EU rules, decoupling direct aid payments from production. Support measures continue to be reviewed and revised on an annual and ad hoc basis. This does not provide security and predictability for producers and processors to engage in the required investments to modernise and prepare for the absorption of future EU assistance and competitive pressures in an increasingly liberalised economic environment. The Agricultural and Rural Development Strategy for the period 2011–2020 has not yet been adopted.

Progress can be reported with regard to establishing a reliable database for policy decisions and monitoring policy impact. Preparations for the agricultural census are ongoing and the census is expected to be carried out in the autumn of 2012. Structures to implement the Farm Accountancy Data Network (FADN) are being established with key responsibilities assigned, core staff appointed and trial

data collection under way. Preparations are under way for setting up an Integrated Administration and Control System (IACS).

The Market Inspection Division of the Ministry of Agriculture, Trade, Forestry and Water Management carried out a total of 2,507 inspections in the market surveillance area in 2011, including compliance with technical regulations and product safety. However, administrative capacities in terms of training and material assets remain inadequate.

Preparations in the area of horizontal issues are on track.

Some progress can be reported with regard to alignment with the **common market organisation**. The adoption of legislation in line with the *acquis* is continuing, with the adoption of implementing regulations on fruit juice in October 2011 and coffee and chicory in 2012. Implementing legislation was also adopted in the wine sector, on a vineyard register in September 2011, on quality standards for wine with geographical indication and on labelling in November 2011, and on the testing of grape must, wine and other products in December 2011. Work has begun on viticulture zoning. The vineyard register was opened in June 2012. Three oenological laboratories have been authorised to carry out analyses. However, the capacity of the administration in charge of the wine market organisation needs to be strengthened. A law on spirit drinks is in preparation with a view to aligning with the *acquis* in the spirit sector. Preparations in this area remain at an early stage.

Regarding **rural development**, progress can be reported concerning the preparations for the management and control system under the Instrument for Pre-Accession Assistance in Rural Development (IPARD). The Department for Rural Development in the Ministry of Agriculture, Trade, Forestry and Water Management (MATFWM), which is planned to become the future Managing Authority, is finalising its organisational structure and procedures as provided for in the IPARD programme. The Directorate for Agrarian Payments, which at present has an allocation of 105 posts, needs to strengthen its capacity in order to implement the pre-accession assistance. The capacity of the National Fund and the Audit Authority still needs to be supported so that they can fulfil their role in the implementation of IPARD. Preparations in the area of rural development are on track.

Little progress can be reported in the area of **quality policy**. Efforts have focused on promoting the opportunities which the Law on Geographical Indications offers to producers and processors. Preparations in this area have started.

Progress in **organic farming** is limited. The Ministry established a task force to prepare a national action plan for the development of the organic sector in Serbia over the next 5 years. Preparations in the area of organic farming are at an early stage.

Conclusion

There has been progress in the area of agriculture and rural development, including with regard to agricultural statistics. Structures and resources for the

implementation of rural development under IPARD have advanced well, but additional capacity building is still essential. Overall, in the area of agriculture and rural development, alignment with the *acquis* remains at an early stage.

4.12. Chapter 12: Food safety, veterinary and phytosanitary policy

Little progress has been made as regards **general food safety** principles. The Food Safety Law already includes most of the principles required in the *acquis*. Some of the features introduced by the Food Safety Law started to be applied, such as the principle of risk analysis and the implementation of hazard analysis and critical control points (HACCP). Both have to be improved further and associated IT systems need to be upgraded. Both the skills base and the equipment of the authorities responsible for official controls and policymaking have been improved but further strengthening is needed. The process of aligning the labelling of foodstuffs with the *acquis* has started. However, enforcement of the law needs to be improved. The National Reference Laboratories Directorate is severely understaffed and thus unable to perform the duties assigned to it by the Food Safety Law. Preparations in the area of general food safety are moderately advanced.

Some progress can be reported in the alignment and implementation of the *acquis* in the field of **veterinary policy**. Implementing legislation has been adopted in this field along with instructions for applying it. Veterinary IT systems are being upgraded. Serbia started participating in the EU Trade Control and Expert System (TRACES) in January 2012. Instructions were adopted for risk analysis at pig farms based on bio-safety questionnaires. The first three campaigns for oral vaccination of foxes against rabies resulted in the number of registered cases of rabies in wild animals in 2011 falling by 75% in comparison to 2009. A system for the identification and registration of bovines is in place and the registration of sheep and goats has started. However, the registration of sheep and goats and their movements needs to be completed. Preparations in the veterinary field are moderately advanced.

Some progress has been made as regards the **placing on the market of food, feed and animal by-products**. Serbia has adopted and implements new national hygiene rules for food and feed establishments. However, the national upgrading programme for establishments still needs to be prepared. The national system for the management of animal by-products needs to be upgraded in order to comply with EU requirements. In this area, Serbia has started to address its priorities.

Some progress has been made on **phytosanitary policy**. A strategy was adopted for the introduction of a plant passport system, along with a manual for its implementation. Implementing legislation on plant health was adopted in December 2011 and March 2012. However, Serbia's phytosanitary inspection procedures are outdated and need to be improved. The procedure for registering new plant protection products is not yet aligned with the *acquis*. Although parts of the legislation on the placing on the market of plant protection products have

been transposed, alignment with the *acquis* still needs to be completed. A pesticide residues monitoring programme meeting EU requirements has yet to be put in place. The capacity of the national reference laboratory and of the regional laboratories for control of seed and seed material and for pesticide residue analysis requires further strengthening to meet EU requirements. Preparations in the area of phytosanitary policy are on track.

There was no progress in the area of **genetically modified organisms**, where Serbia still needs to bring its legislation into line with the *acquis*. This is also one of the conditions for Serbia to become a WTO member. Preparations in this area are at an early stage.

Conclusion

Some progress was made in the area of food safety, veterinary and phytosanitary policy. Further strengthening of the administrative capacity of the institutions involved in monitoring food chain safety, in particular the veterinary, phytosanitary and national reference laboratories, is needed. Efforts are needed as regards upgrading of food and feed establishments, the management of animal by-products and genetically modified organisms. Overall, preparations in the area of food safety, veterinary and phytosanitary policy are moderately advanced.

4.13. Chapter 13: Fisheries

EU requirements on **resource and fleet management and inspection and control** do not apply to inland fishing and are therefore not applicable to Serbia, except for control of marketing and traceability of fishery products. There has been no progress on the establishment of a national catch certification scheme for imports and exports of fishery products.

No progress can be reported on **structural action** for small-scale commercial fisheries and inland fisheries. Serbia does not have an operational fisheries programme that could be a basis for the introduction of structural measures.

Some progress can be reported in **market policy**. Another export facility was added to the list for exports of fishery products to the EU in 2012. No developments can be reported on establishing producers' organisations and collecting market data. The capacity of the administration dealing with management and control for imports and exports of fishery products remains to be enhanced and brought into line with the obligations of the common fisheries policy.

Some progress can be reported regarding **State aid**. Aquaculture producers received aid to buy juvenile fish, and fisheries organisations are eligible to apply for subsidies for the protection and sustainable use of fish in order to improve the catch per unit effort, the preservation of the diversity of ichthyofauna and the ecological integrity of aquatic systems.

Serbia signed **international agreements** in the veterinary and food safety area, which also covers fishery products, with the former Yugoslav Republic of

Macedonia, Bosnia and Herzegovina, Uruguay, Algeria and Montenegro. Furthermore, an agreement on the protection and sustainable use of the Danube salmon population in the River Drina was signed in March 2012 with Bosnia and Herzegovina.

Conclusion

Some progress can be reported under this chapter with the signing of some international agreements. However, the collection of market data needs to be improved and a national catch certification scheme for imports and exports of fishery products needs to be established. Overall, preparations in the area of fisheries are moderately advanced.

4.14. Chapter 14: Transport policy

Some progress can be reported in the area of **road transport**. The Law ratifying amendments I-VI to the European Agreement on the work of crews of vehicles engaged in international road transport (AETR) and the Law ratifying the Agreement on the international carriage of perishable foodstuffs and on the special equipment to be used for such carriage (ATP) were adopted in December 2011. The digital tachograph system has been introduced and in January 2012 the Road Traffic Safety Agency started issuing memory cards for digital tachographs. The Agency has continued to increase its capacity and 47 of the 65 planned posts are filled. A Road Safety Coordination Body to coordinate work on reducing the number of traffic accidents was established in September 2011. Implementing legislation remains to be adopted to comply with the EU rules on access to the international road market and to the occupation of road transport operator, the driving and rest periods of drivers engaged in domestic transport and the transport safety conditions for tunnels. The transparency of the fees charged for special transport operations exceeding the permitted vehicle dimensions, total mass and axle load needs to be ensured. Further alignment with recent road safety and dangerous goods *acquis* is still necessary.

There has been little progress in **rail transport**. The further transformation of Serbian railways JSC into a holding with four different daughter companies is ongoing. The new Law on railways and the railway safety and interoperability Law have not been adopted. The independence of the infrastructure manager from the railway operator, fair access to the market and transparent infrastructure charging system remain to be achieved. The market remains virtually closed due to the high cost of the license and its maximum duration of one year. The network statement has not been published. The railway regulatory body and independent accident investigation body have not been set up. The Border Crossing Agreement between Montenegro and Serbia needs to be further aligned with the EU legislation.

Some progress was made in the area of **inland waterway transport**. Implementing legislation on the programme, method and cost of a special

examination for navigation safety inspectors, and on the format of the official navigation safety inspector's identity card was adopted in February 2012. A Rulebook on the qualification and conditions for obtaining certificate for competence of onboard crew member of merchant inland waterway vessels was adopted in July 2012. The implementation of River Information Services is ongoing also for the River Sava.

Little progress can be reported in the area of **combined transport**. The project documentation for the construction of an intermodal terminal in Belgrade was completed in March 2012.

Good progress can be reported in the area of **air transport**. In all 22 regulations implementing the Law on Air Transport have been published. Some of these provisions amend the responsibilities of the independent body for investigating accidents and serious incidents and the inspection oversight duties of the Civil Aviation Directorate, with the aim to align national law with the relevant EU rules. Implementation of the requirements under the first transitional phase of the European Common Aviation Area Agreement (ECAA) continued. The Law on Obligations and the Basics of Property Relations in Air Transport, aiming to align national provisions with with the EU legislation on passengers' rights, was adopted in November 2011. A specific national body to enforce the law has yet to be established. Provisions aligning with the EU and international rules (Montreal Convention) on air carrier liability in the event of accidents have been introduced. Further national provisions intending the alignment with the Single European Sky legislation has been achieved, in particular concerning the provision of air navigation services (ANS), the methodology for determining and calculating the ANS charges, the regulation of air space management, and the interoperability of the ATM systems. Implementation of the rules on slot allocation, ground handling and airport charges needs to be concluded.

Little progress can be reported in the area of **maritime transport**. The Law on Maritime Navigation has been adopted and entered into force in November 2011.

No progress was made in the area of **satellite navigation**. Serbia has announced its intention to take part in the Galileo satellite navigation programme.

Conclusion

Some progress can be reported in the area of transport policy, particularly in road, inland waterways and air transport. Further strengthening of capacity is needed, in particular for enforcement and inspection. The new Law on Railways and the Railway Safety and Interoperability law need to be adopted. Attention needs to be paid to fair market access; further efforts need to be made in separation of infrastructure manager and railway operator, as well as a properly defined regulator. *Overall*, Serbia is moderately advanced in its alignment with the *acquis* in the area of transport policy.

4.15. Chapter 15: Energy

Little progress was made as regards **security of supply**. As regards oil stocks, the draft Law on Commodity Reserves, regulating the compulsory reserves of oil and oil derivatives, remains to be adopted. A feasibility study for the Serbian part of the South Stream gas pipeline was completed in April 2012. The company South-Stream Srbija was established in December 2011 to carry out all activities involved in implementation of the project. The feasibility study for construction of the Nis-Dimitrovgrad gas interconnector linking Serbia to Bulgaria has been finalised, but the financing of the project needs to be secured.

As regards **the internal energy market**, little progress was made. The 2011 Energy Law is largely in line with the requirements of the Energy Community but the adoption of implementing legislation is progressing slowly. The unbundling of distribution and supply functions in the publicly owned generation, distribution and supply electricity company Elektroprivreda Srbija (EPS) has not yet been achieved. The electricity market has been opened for all non-household consumers. The energy regulator approved the new methodologies for establishing the costs for connection to electricity and gas transmission and distribution systems and the cross-border capacity allocation rules for electricity for 2012. However, no eligible customers have switched supplier. All eligible customers connected to the distribution system are entitled to be supplied at regulated tariffs until 2013. EPS, holds a de facto monopoly, due to the persistence of regulated prices which are set at levels below the market price. Under the new Energy Law, the tasks and powers of the Energy Agency of the Republic of Serbia (AERS) are largely in line with the second package of the EU energy *acquis*, but the implementation of the new law will require an increase in the AERS' staff and further capacity building. Adoption of the Electricity Market Code is still pending. Serbia needs to start preparing for alignment with the EU's third internal energy market package. The state-owned Srbijagas has not been unbundled. It remains a fully integrated company and is the only wholesale supplier on the market.

Further to the complaint against Serbia issued under the Energy Community dispute settlement mechanism on the absence of compensation for electricity transit to the Kosovo electricity transmission system and market operator (KOSTT) and the allocation of cross-border capacities, the Energy Community Secretariat issued a Reasoned Opinion in October 2011. According to that opinion, Serbia has failed to fulfil its obligations under the Energy Community Treaty. Since then Serbia has not addressed the issue referred to in this opinion.

There has been little progress in **renewable energy and energy efficiency**. The Energy Law is partly in line with the Renewable Energy Sources Directive. Revised feed-in tariffs, which were due by the end of 2011, have not yet been adopted. The administrative procedures for issuing construction permits, licensing and network connections remain the biggest obstacle to the uptake of renewables. Further efforts need to be taken to strengthen administrative capacity and create a regulatory environment that fosters the increased use of renewable

energy sources in all sectors. Serbia has not yet adopted the planned framework law on rational use of energy. A first annual programme for financing energy efficiency projects in the public sector was adopted in March 2012, with a budget of € 13 million.

There has been some progress in **nuclear safety and radiation protection**. The Agency for Protection from Ionising Radiation Protection and Nuclear Safety (SRPNA) has issued legislation to implement the Law on Ionising Radiation Protection and Nuclear Safety. The transfer of inspection functions from the line ministries to the SRPNA has not yet been achieved. Effective financial independence and sufficient levels of staff and funding are needed to ensure that the Agency functions properly, particularly for licensing nuclear facilities. Serbia still needs to adopt a national programme for spent fuel and develop a national strategy for radioactive waste management and the decommissioning of its RA research reactor at Vinča. Further efforts are required to improve the radiological situation at the Vinča site, to abandon the Kalna mine and to improve radioactive waste management at national level.

Conclusion

Little progress can be reported in the area of energy. Further efforts are needed to achieve real market opening, unbundling and cost-reflective tariffs. Framework legislation on rational use of energy as well as legislation on commodity reserves remains to be adopted. The role and independence of the AERS and the nuclear regulator need to be strengthened. As a matter of urgency, Serbia needs to address the issue referred in the Reasoned Opinion of the Energy Community. Overall, preparations in the area are moderately advanced.

4.16. Chapter 16: Taxation

There was little progress on alignment in the area of **indirect taxation**. The law on *excise duties* was amended in December 2011 to further approximate with the *acquis* on tobacco taxation. The excise duties charged on the retail price were increased. The concept of weighted retail price — similar to the one in the EU — has also been introduced, replacing the most popular price as the basis for calculating the minimum excise duty. Legislation on other excise goods and on issues such as movement and control, excise warehouses and storage or the concept of taxpayer remains to be aligned with the *acquis*.

Little progress was achieved in **direct taxation**. Amendments to the Property Tax Law were adopted in October 2011, postponing a tax increase until after 2012. Changes were made to the law on tax on profits in December 2011 to provide certain tax reliefs for companies undergoing financial restructuring. Tax reliefs were introduced for profits generated by production in free zones. The amendments to the Law on Tax Procedure and Tax Administration were adopted in December 2011 aim to strengthen fiscal discipline and clarify some tax

procedures. They also allow companies undergoing financial restructuring to pay their taxes in instalments over a longer period.

Some progress was made as regards **administrative cooperation and mutual assistance**. The B-6 (Balkan countries) agreement on cooperation among tax administrations in the region was extended to Croatia. Agreements on avoidance of double taxation were signed with Canada, Georgia and Tunisia in April 2012, while the agreements with Montenegro and Iran came into force as of 1 January 2012.

Progress was made in the area of **operational capacity and computerisation**. The Serbian Tax Administration (STA) has started to implement its corporate strategy for 2011-2015. It adopted in December 2011 the 2012 compliance plan focussing on taxpayers with a poor compliance record. The Large Taxpayers Office has hired an additional 22 staff and has increased the number of taxpayers under its jurisdiction by more than 20%. It has introduced a new operational plan aimed at boosting total tax revenues. The STA started routinely publishing data about its biggest debtors. The Contact Centre — which started operating in 2011 — has become a key customer service unit. As of April 2012, all VAT payers have the option of declaring their tax electronically. However, the IT system needs to be further improved. A better coordination in the STA is necessary.

Conclusion

Some progress can be noted in the area of taxation. The corporate STA strategy is being implemented, but modernisation needs to continue. Tackling the grey economy remains a challenge. Substantial efforts are required to improve the IT system and communication with taxpayers and to further align the legislation on excise duties. Overall, preparations in the area of taxation are moderately advanced.

4.17. Chapter 17: Economic and monetary policy

No progress can be reported in the area of **monetary policy**. The National Bank of Serbia's (NBS) independence has been seriously challenged by the adoption by the Parliament of amendments to the Law on the NBS in August 2012. These amendments, which inter alia force the immediate replacement of the Governor - within 90 days after their entry into force and without proper justification - led to the resignation of the incumbent Governor, one vice Governor and several NBS Council Members. Another amendment violates the EU Treaty by removing the right of judicial review in case of dismissal of the Governor.

As regards **economic policy**, Serbia continues to participate in pre-accession economic policy surveillance. It submitted its 2012 economic and fiscal programme (EFP) in January. This programme covers the period 2012-2014, providing an overview of expected macroeconomic developments. As regards the

macroeconomic and fiscal framework, the programme gives a clear overview of past economic developments, in line with the requirements. As regards the structural reforms framework, the programme fails to provide fully convincing action plans as regards the medium-term policy priorities. As a candidate country, Serbia has also been included in the bi-annual Economic Forecast prepared by the European Commission.

As regards fiscal responsibility, the level of public debt has exceeded the maximum set by national legislation at 45% of GDP and is now over 55%. In view of the huge financing needs, the problem of a possible further rise in government debt remains acute. The capacity for economic policy formulation and coordination needs to be further improved.

Conclusion

No progress was made in the area of economic and monetary policy. The amendments to the Law on the NBS seriously challenge the independence of the central bank and thus, constitute a significant step back in the alignment to the EU *acquis*. The capacity for economic policy formulation and coordination needs to be improved. Overall, in the area of economic and monetary policy, Serbia is moderately advanced in addressing the *acquis*.

4.18. Chapter 18: Statistics

Some progress was made in the area of **statistical infrastructure**. A plan for statistical surveys in 2012 was adopted in December 2011. The Statistical Office of the Republic of Serbia (SORS) also adopted the procedure for granting access to non-identifiable individual data for scientific/research purposes. The action plan for harmonisation with the European Statistics Code of Practice based on the results of the Light Peer Review is under timely implementation.

Given the tasks required to comply with the *acquis*, the number of qualified staff at the SORS will need to be increased over the next few years.

There was some progress in the area of **classifications and registers**. The revised classification of activities, NACE rev.2, has been further applied to time series of national accounts. The issue of the regional statistical classification (future NUTS) remains open. This goes beyond the scope of technical expertise and requires a political decision.

There was good progress in the area of **sectoral statistics**. The population census was carried out in 2011; field work has been completed and data processing is ongoing. Preparations for the agriculture census are under way. Implementation of the *acquis* on agricultural statistics needs further attention. As regards social statistics, the survey of income and living conditions (SILC) is about to be introduced. The SORS has to step up preparations for the comprehensive delivery of national accounts data according to ESA 95 and its transmission programme.

Conclusion

Good progress can be reported in the area of statistics. The population and housing census was carried out according to plan. The capacity of the Statistical Office of the Republic of Serbia will have to be reinforced over the next few years in order to allow comprehensive implementation of the statistical *acquis*. Overall, Serbia is moderately advanced in the area of statistics.

4.19. Chapter 19: Social policy and employment

There has been no progress in the field of **labour law**. Further efforts are needed in this area.

There has been some progress in the area of **health and safety at work**. Serbia has adopted rules further aligning its legislation with the *acquis* on exposure to vibrations, to noises and to carcinogens or mutagens at work. The Labour Inspectorate carried out a considerable number of inspections, and training and awareness-raising activities targeting workers and social partners continued. Preparations in this area are well on track.

There has been little progress in the area of **social dialogue**, which continues on a tripartite basis within the Economic and Social Council at national level. The issue of representativeness of member organisations continues to hamper the work of the Council. The Council is still not being consulted on a regular basis on labour-related draft laws, which remains a major problem for its work. An agreement on the minimum wage was signed in April 2012 by all members of the Economic and Social Council. At local level, 18 Economic and Social Councils are in operation, of which two were recently established. However, they lack financial resources, have no work programmes and do not meet regularly. The weakness of employers' organisations at local level is a further obstacle.

There has been some progress as regards **employment policy**. The annual performance agreement between the Ministry of Economic Affairs and Regional Development (MoERD) and the National Employment Service (NES) was concluded in March 2012. The National Employment Action Plan for 2012 has been adopted in accordance with the priorities specified in the National Employment Strategy 2011-2020. Two new measures were introduced in order to address the problems of unemployed people without working experience or qualifications. A specific decision was adopted on co-financing of local employment measures for 134 local employment plans and 15 licences were issued to private employment agencies. Also in 2012, a special public call for inclusion of Roma and people with disabilities in active employment measures was published. The administrative capacities of the MoERD and the NES have been further developed. Employment policy was transferred from the Ministry of Economy back to the Ministry of Labour and Social Policy.

However, the annual budget for active labour market measures was reduced by 14% compared to 2011 and the total allocations for active employment policy continue to represent only 0.1% of GDP. As a result, the 'First Chance'

programme, in favour of youth employment, will not be expanded. The coverage of active labour market measures remained limited as only 20% of the unemployed participated in labour market measures and only a third of them became employed in 2011. Employment policies failed to impact meaningfully on the labour market situation which further deteriorated. Undeclared work remains high, at an estimated 17% of the work force, youth unemployment increased and activity and employment rates decreased, notably for women. Additional efforts are needed to ensure better targeted and efficient labour market measures and to develop a strategic approach to employment, especially in a context of limited financial resources, increasing unemployment and deteriorating economic growth. Preparations in this area are on track.

There has been some progress as regards preparations for the **European Social Fund**. The MoERD has reorganised the employment department and provided intensive training for all staff. Preparations in this area are on track.

There has been some progress in the field of **social inclusion**. The adoption of implementing legislation on welfare allowances and the introduction of earmarked transfers to local municipal governments for community services have provided a basis for the implementation of the Law on Social Welfare. Social services are being improved. The law has introduced new concepts in terms of accessibility to social services, including the right for beneficiaries to complain. Active measures to increase social inclusion of the Roma have continued. The enrolment rate of Roma children in the education system has increased. 170 Roma teaching assistants have been employed together with 75 health mediators. However, the availability of community-based social services across the country remains limited. The Roma community, one of the most vulnerable groups, is exposed to multiple forms of exclusion and is particularly in need of cross-sectoral coordinated support. The strategy to improve the situation of disabled people for 2007-2015 is being applied. The first results of implementation of the Law on Professional Rehabilitation and Employment of People with Disabilities are positive. Preparations in this area are on track.

No progress can be reported in the area of **social protection**. As a result of the deterioration of the Serbian economy, which has affected many businesses, but also due to insufficiently developed mechanisms of enforcement and control, the pension and health fund deficits have increased further. In the absence of sufficient funds for the payment of pensions, transfers from the budget have become the largest single item on the expenditure side. The health insurance fund has accumulated debt which was estimated to stand at about € Integrated/cross-sectoral social services need to be further developed. Preparations in this area are not very advanced.

There has been some progress in the field of **anti-discrimination**. The capacities of the Commissioner for the Protection of Equality have been improved. Office space has been provided, and the office has 18 staff. In 2011, the Commissioner issued 98 opinions and 17 recommendations to public authorities for the establishment of equality, and filed charges for violation of the

Anti-discrimination Law in three cases. However, further efforts are needed to establish a track record of prosecutions and final convictions for offences related to discrimination. A number of provisions of the Serbian Anti-discrimination Law are not in line with the *acquis*: exceptions granted to religious institutions are too wide, there is no mention of the obligation to provide reasonable accommodation to disabled employees, the definitions of indirect discrimination and instruction to discriminate are not in line with the *acquis*, and the role of NGOs and associations in judicial proceedings is not explicitly provided for. Those most exposed to discrimination are Roma, women, persons with disabilities and the LGBT population. They are frequently victims of intolerance, hate speech and even physical attacks. Public officials have been reluctant to publicly condemn such incidents. Serbian authorities need to develop a proactive approach towards the better inclusion of the LGBT population and a greater understanding across society. Serbia has started to address its priorities in this area.

No progress can be reported on **equal opportunities** between women and men. Implementation of the Strategy for the enhancement of women's position and gender equality (2010-2015) and the related Action plan needs to be followed up better. Implementation of the National Strategy for Prevention and Elimination of Violence against Women should also be continued. Further streamlining of the administrative capacities of bodies dealing with gender equality is needed as women remain exposed to discrimination and lower salaries, pensions and employment rates. Preparations in this area are moderately advanced.

Conclusion

Some progress can be reported in the area of social policy and employment, especially in the fields of employment policy, health and safety at work and social inclusion. However, employment policies in general are affected by adverse economic developments and limited budget allocations and need to be enhanced. Increased efforts are also needed to restructure and reform social protection and regain sustainability. Overall, Serbia has started to address its priorities in this area.

4.20. Chapter 20: Enterprise and industrial policy

Progress was made in the area of **enterprise and industrial policy principles**. A new definition of SMEs was adopted in December 2011 in line with the EU recommendation. The strategy for the development of competitive and innovative small and medium-sized enterprises for the period 2008-2013 continued to be implemented. The SME policy is also part of a number of other strategies, such as the industrial development and regional development strategies adopted in 2011. The Business Council established at the Chamber of Commerce is working well. The SME Council has not been active.

Implementing legislation on measures to prevent delayed payments by the public sector to business operators was adopted in October 2011. It partly aligns

Serbian legislation with the Late Payment Directive and sets the maximum deadline for payment at 60 days. So far, the new rules have had a limited effect. Serbia still needs to pass legislation against delayed payments between businesses. Substantial delays in payments between economic operators persist, resulting in their chronic illiquidity.

Regarding **enterprise and industrial policy instruments** progress has been made; Serbia continues to implement the Small Business Act and to participate in other projects under the European Entrepreneurship and Innovation Programme (EIP). However, further efforts are needed in relation to company registration, business incubators and access to finance for SMEs.

The Innovation Fund has started working, providing grants for innovations. The Agency for Regional Development supports the establishment of incubators. The Development Fund has no new funds available for loans, but channels the repayments of old loans into some new projects, such as support for women entrepreneurship.

No progress has been registered in relation to **sector policies**.

Conclusion

Progress was made in the area of enterprise and industrial policy. Serbia implements the Small Business Act in an appropriate manner and other preparations in enterprise and industrial policy are on track.

4.21. Chapter 21: Trans-European networks

Some progress was made in the area of trans-European **transport networks** (TEN-T). Serbia cooperated actively in the implementation of the Memorandum of Understanding on the development of the South East Europe Regional Transport Network (SEETO). The SEETO transport network has been integrated into Serbia's Strategy for the development of railway, road, waterway, air and intermodal transport from 2009 to 2015. Implementation of the action plan for the construction of road corridor X has advanced. The procurement procedures have started for several remaining sections on the E80 (Nis-Dimitrovgrad) and E75 (Nis-former Yugoslav Republic of Macedonia) motorways and the Belgrade bypass. Several major projects to develop project documentation for rail corridor X are under way or in preparation.

Some progress was made in carrying out infrastructure projects and enhancing navigation conditions on the inland waterways network along the River Danube and the River Sava including River Information Services.

As regards trans-European **energy networks** (TEN-E) little progress was made. The feasibility study and general design for the South Stream gas pipeline were prepared. (*See Chapter 15 — Energy*) Serbia continues to support implementation of the Gas Ring project for south-east Europe. The feasibility study for construction of the Nis-Dimitrovgrad gas interconnector linking Serbia

to Bulgaria has been finalized. However, the financing for the project needs to be secured. Concerning electricity, the construction of section 2 (Leskovac-Vranje-border substation) of the electricity line from Nis to the border with the former Yugoslav Republic of Macedonia was completed in November 2011. Construction of the Leskovac and Vranje substations is ongoing. Further project documentation for an interconnection project with Romania, connecting Pancevo (Serbia) to Resita (Romania), is being prepared. As regards oil infrastructure, Serbia continues to support the planned pan-European oil pipeline.

Conclusion

Serbia has made some progress in the area of trans-European networks. It is continuing to develop its transport and energy networks and to participate actively in the work of the South East Europe Transport Observatory and the Energy Community. However, major challenges remain in terms of financing the new interconnections between energy and transport networks. Overall, preparations in the area of trans-European networks are moderately advanced.

4.22. Chapter 22: Regional policy and coordination of structural instruments

There has been little progress on the **legislative framework** impacting on regional policy. The government adopted in May 2012 the updated Decree on the Decentralised Management of EU Pre-accession Assistance under the Instrument for Pre-accession (IPA). Efforts are needed in all areas relevant for implementation of the cohesion policy in line with the *acquis*.

There has been progress with regard to the **institutional framework**, not least in terms of preparing the operating structures for the implementation of all IPA Components. Units for programming and implementation of IPA have been established. However, efforts are needed to avoid the parallel systems, namely for national policy and for the Cohesion Policy.

Progress can be reported with regard to **administrative capacity**. Serbia finalised preparations under the Roadmap and Action Plan for decentralised management of IPA funds for Components I-IV and in June 2012 submitted the accreditation package for the conferral of management of these Components. Considerable additional efforts are required in order to ensure adequate administrative capacity in line with the future workload.

There has been some progress in the area of **programming**. The Serbian government has further developed the draft Strategic Coherence Framework and the Operational Programmes (OPs) for IPA Components III and IV, providing a good basis for the next financial perspective and the relevant policy areas. Interministerial coordination has improved. Despite efforts to prepare a pipeline of projects, the lack of strategically developed investment plans remains an obstacle. Projects continue to be selected on an ad hoc basis rather than on the basis of strategic sectoral priorities. Coordination between the operating

structures responsible for programming and final beneficiaries, and the capacity of final beneficiaries to develop project documentation in line with the EU standards, are still not sufficient.

Some progress can be reported with regard to **monitoring and evaluation**. The secretariat of the National IPA Coordinator (NIPAC) is responsible for monitoring and evaluating programmes. The sectoral working groups are increasingly taking on more ownership of programming and will be gradually transformed into sectoral monitoring committees.

There has been good progress in the area of **financial management, control and audit**. The Audit Authority now has minimum staffing, including three auditors. Further staffing and improvement of audit capability is required.

Conclusion

Progress was noted in the area of regional policy and coordination of structural instruments. Serbia has completed the preparatory stages for the decentralised management of IPA for four Components. Adequate implementation capacity needs to be further ensured. Programming needs to be improved, especially in terms of preparing a solid project pipeline based on relevant strategies. Overall, preparations in this area are advancing.

4.23. Chapter 23: Judiciary and fundamental rights *(See also Political Criteria)*

Serbia has made only little progress in the area of the **judiciary**.

There was little progress regarding the *independence* of the judiciary. The High Judicial Council (HJC) and the State Prosecutorial Council (SPC) took over the administration of the budget of courts and prosecution services in March 2012. However, the legal framework still leaves room for undue political influence over the judiciary. There were shortcomings in the composition of the HJC. The HJC and the SPC have not yet finalised the appointments of court presidents and public prosecutors. The HJC and the SPC have not yet adopted rules on regular evaluation of the work and performance of serving judges and prosecutors. The foreseen evaluation of the magistrates newly recruited in 2009 for a three year term is in particular pending.

The HJC and SPC finalised the review procedure for non-reappointed judges and prosecutors on the basis of objective guidelines. The review was intended as an additional remedy to address the petitioners' claims without limiting their right to subsequent judicial review by the Constitutional Court. The review was open to external monitoring, based on individual hearings and concluded with individual, detailed, written decisions. However, it was not conducted fully in line with the letter and spirit of the guidelines. Serious procedural shortcomings were identified, including lack of quorum and voting patterns in the HJC. This raised concerns that contrary to the guidelines the ex-officio members (the President of the Supreme Court of Cassation, the Minister of Justice and the President of the

Parliamentary Committee for Judicial Affairs), who had participated in the initial reappointment procedure, had substantially influenced the decisions taken on the basis of the review commissions' proposals. Evidence used in the decisions was not always admissible according to the guidelines or was introduced at too late a stage. For these reasons, in two rulings in July 2012, the Constitutional Court revoked all the decisions taken by the HJC and SPC of non-re-appointment challenged by the petitioners so far and instructed the HJC and the SPC to reinstate all of them. Cases returned by the Constitutional Court will need to be re-examined diligently and in full accordance with the Constitutional Court's rulings.

The *impartiality* of judges continues to be broadly ensured thanks in particular to automated allocation of court cases, which has now been introduced in all commercial courts and courts of general jurisdiction. In order to enforce *accountability*, the SPC adopted a first set of Rules on disciplinary procedure and liability in July 2012, which needs to be further aligned with EU standards. The HJC has started to investigate and impose penalties in disciplinary cases.

The Judicial Academy has a key role to play in ensuring that professional standards and merit-based principles are applied in the judiciary. A second generation of new students was selected and the Academy provided a variety of in-service training programmes for judges, prosecutors, judicial staff and attorneys. A proper merit-based career system for judges and prosecutors remains to be fully developed. It is still possible to enter the judicial profession, in particular at higher levels, on the basis of unclear criteria without having passed through the Judicial Academy.

A number of laws came into force aimed at improving the *efficiency* of the judiciary and applying international standards in national courts. In 2011, following a new accounting methodology, the courts received 2.23 million new cases, resolved 2.65 million cases and were left at the end of the year with a backlog of 3.34 million cases. However, major imbalances persist in the courts' workload and a comprehensive analysis of the functioning of the new court network is needed. The quality of statistics needs to be improved. Amendments aimed at improving the efficiency of the Constitutional Court were adopted but the Court continued to face a significant and rapidly growing backlog of cases.

Serbia has made little progress on **anti-corruption policy**. The Government has not yet finalised its National Anti-Corruption Strategy for 2012-2016 nor its corresponding Action Plan.

The Anti-Corruption Agency's operations increased, mainly focusing on prevention. The Agency started to implement the 2011 Law on the Financing of Political Activities, and continued to make targeted checks on asset declarations collected and to process cases of dual public functions presenting a risk of conflict of interest. However, the Agency has still to establish a track record of effective checks on party funding and electoral campaign. It also needs to improve cooperation with relevant stakeholders to investigate declarations of assets effectively. There was little action to protect whistleblowers. There has been no

further follow-up to the reports of the Anti-Corruption Council on high-profile cases.

The special prosecutor for corruption and organised crime launched new investigations in 115 corruption cases in 2011, while 2770 ones were launched from other public prosecutors' offices during the same period. These included several medium- to high-level cases. Further efforts are needed in order to establish a track record of prosecution and conviction, particularly in high-level cases. The law enforcement bodies need to become more proactive and develop their ability to conduct financial investigations.

Public procurement, management of public enterprises, privatisation procedures and public expenditure remain areas of serious concern, especially in the Health and Education domains, in which independent supervision and capacity for early detection of wrongdoing are underdeveloped. Comprehensive risk analyses for areas vulnerable to corruption are needed. Coordination between all stakeholders needs to be strengthened to ensure effective prevention and handling of corruption cases.

Little progress has been made in the area of **fundamental rights**.

Regarding the *prevention of torture and ill-treatment* the Ombudsman carried out his first inspections acting as the newly designated National Prevention Mechanism. Overcrowding in the *prison system*, poor living conditions in detention facilities, unsatisfactory healthcare and the lack of adequate and specific treatment programmes are still a matter of concern. The internal control of the police needs to be enhanced. Alternative sanctions need to be introduced on a wider scale. Constitutional guarantees on *access to justice* are in place. Legislation and funding for an effective system of free legal aid still need to be developed. The legal framework providing for *freedom of expression* and the media is in place. Attacks and threats against journalists have decreased slightly but a more comprehensive and proactive approach by the police and the judiciary remains essential. Transparency of media ownership still needs to be fully ensured and the implementation of the media strategy needs to be speeded up. *Freedom of assembly and association* is constitutionally guaranteed and in general respected. The Serbian Constitutional Court developed its case law regarding freedom of assembly. *Freedom of thought, conscience and religion* is guaranteed and generally respected. The lack of transparency and consistency in the registration process continues to be one of the main obstacles preventing some smaller religious groups from exercising their rights.

There has been some progress relating to *women's rights and gender equality*. Serbia signed the Council of Europe Convention on preventing and combating violence against women and domestic violence. A special telephone line and a new shelter for victims of domestic violence were opened. However, violence against women still remains an area of concern and there is no coordinated collection and sharing of data on violence against women and violence in the family. As regards *children's rights*, little progress has been achieved. A special telephone line for victims of juvenile violence was introduced. Children's rights are unevenly protected. Some

Roma children are still being enrolled in special schools. Some progress has been made concerning the *socially vulnerable and/or persons with disabilities*, notably with regard to their promotion, education and inclusion on the labour market and the development of community-based services. There has been some progress in the area of *anti-discrimination policies*. Serbia's anti-discrimination legislation is broadly in line with European standards on combating racism and racial discrimination. The Equality Protection Commissioner's office was active in raising awareness of discrimination and ways of addressing it. Police improved their response to attacks against some groups. However, discrimination based on ethnicity, gender, and sexual orientation remains widespread. Serbian authorities need to develop a proactive approach towards the better inclusion of the LGBT population and a greater understanding across society. No progress has been made regarding *labour and trade union rights*. Several registered trade unions are still not recognised. Concerns remain as to the criteria for social partners' representativeness in the social dialogue which remained limited at both national and local level. Regarding *property rights*, implementation of the 2011 law on restitution has started.

Limited progress has been made regarding *respect for and protection of minorities and cultural rights*. The legal framework is in place and generally respected. Some positive steps were taken to improve the situation of minorities, including the Roma. However, additional efforts are needed to ensure effective implementation of the legislation throughout the territory of Serbia and to address shortcomings. Roma, refugees and internally displaced persons continue to face a difficult situation. Additional efforts are required to comply with international standards on forced evictions.

There has been no progress regarding the *protection of personal data*. The legal and institutional framework is broadly in place. Several provisions of the Law on Protection of Personal Data are not fully in line with EU standards. An action plan implementing the strategy still needs to be adopted. The office of the Commissioner for Free Access to Information of Public Importance and Personal Data Protection, faced with a constant increase in the number and complexity of the cases, still lacks sufficient resources. Further efforts are needed in order to ensure the collection and processing of personal data in line with EU standards.

There were no developments in relation to **EU citizens' rights**.

Conclusion

There has been little progress regarding the judiciary and fundamental rights. The review of reappointments of judges and prosecutors did not correct the existing shortcomings and was overturned by the Constitutional Court who ordered the reinstatement of all judges and prosecutors that had appealed their non-reappointment. A new strategy for judicial reform, based on a functional review of the judiciary, is needed. Implementation of the legal framework to fight corruption has continued. However, a new Anti-Corruption Strategy and Action Plan are still pending. Stronger political direction, more effective inter-agency

coordination and a proactive approach in investigating and prosecuting corruption are needed. Regarding fundamental rights, the legislation is in place and broadly respected. Freedom of expression is in general guaranteed but the implementation of the media strategy needs to be speeded up. Discrimination based on ethnicity, gender, and sexual orientation remains widespread and further measures to fight all forms of discrimination are needed. A proactive approach towards better inclusion of the LGBT population and a greater understanding across society is needed. Some positive steps were taken to improve the situation of minorities, including the Roma, but additional efforts are needed to achieve consistent implementation of the legislation across Serbia. Overall, Serbia has started to address its priorities regarding alignment with the *acquis* in the area of the judiciary and fundamental rights.

4.24. Chapter 24: Justice, freedom and security

Visa liberalisation for citizens of Serbia travelling to the Schengen area has been in force since December 2009. In order to ensure on-going implementation of the commitments taken, a post visa liberalisation monitoring mechanism has been established. The Commission presented its second monitoring report to the European Parliament and the Council in December 2011 and adopted the third in August 2012. The increase observed in the previous years in the number of unfounded asylum applications by Serbian citizens under the visa-free regime was stopped in 2011, following decisive measures by the Serbian authorities. It nevertheless increased again in the first months of 2012. With more than 13,900 applications in 2011 and more than 5000 in the first seven months of 2012, Serbian nationals remained one of the highest-ranked nationalities of asylum applicants in the EU. This nonetheless corresponded to a 25% decrease in 2011 applications compared to 2010 (more than 17,000 applicants at that time). The number of Serbian citizens finally granted asylum in EU Member States remained stable in 2011 (310) compared to 2010 (315). Efforts to address this issue need to be strengthened. Overall, Serbia is moderately advanced in addressing the unfounded asylum applications by Serbian citizens under the visa free regime.

There has been no progress regarding **migration** management. The number of irregular migrants passing through Serbia and whose final destination is the EU has increased: about 9,500 irregular migrants were registered in 2011, as compared to 2010, when approximately 2,500 were recorded. The 2012 Action Plan for the implementation of the migration management strategy was adopted in May 2012. Coordination amongst bodies responsible for implementing the migration strategy still needs to be improved and sufficient financial means allocated. The readmission agreement between the EU and Serbia continued to be implemented without significant problems, although the capacities and resources for integrating returnees from the readmission process are very limited. Some 5,150 persons were returned to Serbia from an EU Member States in 2011 (3,979 in 2010). Under the Agreement, a new bilateral implementing protocol has been

concluded with Estonia. The main countries from where returns take place are, by decreasing number, Germany, Sweden, Switzerland, Denmark, France and the Netherlands. Overall, migration management in Serbia continues to be moderately advanced.

Regarding **asylum**, no progress has been made. Claims are still temporarily processed by the Border Police Asylum Unit, as the Asylum Office intended to operate as the first-instance body has not yet been formally established. The mandate of the Asylum Commission, the second-instance body, was renewed in September 2012 and its members were appointed. The number of asylum claims has increased. Criteria for verifying safe countries of origin and the list of safe third countries still remain to be fully aligned with the *acquis*. A new reception centre is being built but additional reception facilities for asylum seekers are needed. Capacities and practices, including staff training, need to be improved. A national database for checking personal data and fingerprints of asylum-seekers is still missing. Overall, Serbia continues to be in the early stages of implementing the asylum policy.

There has been some progress on **visa policy**. As regards requirements to be met as of accession to the Schengen area, a new software and a Visa Centre which offers an online, prompt and more transparent procedure in line with the Visa Information System (VIS) has been operational since May 2012.

The list of countries for which a visa is required needs to be brought fully into line with the *acquis*. Overall, Serbia is moderately advanced in aligning its visa policy with European standards.

Progress has been achieved in the area of **external borders and Schengen**. The coordination body for implementing the Integrated Border Management (IBM) strategy has become operational. Serbia has continued to improve the infrastructure and equipment at border crossing points by completing installation of the TETRA system. Additional border police posts have been connected with the central database of the Ministry of the Interior. Serbia has been involved in joint operations, regular exchanges of data and best practices, and training activities with Frontex; it participates in the Western Balkans Risk Analysis Network. International cooperation continued to improve and an agreement between Serbia and Hungary on border control of road, railway and water traffic was signed in January 2012. Police cooperation with Bulgaria has also been enhanced with the establishment of joint patrols on the Serbian-Bulgarian border. However, the revised IBM strategy and its action plan, the protocol on information exchange among services, the concept for joint training among services, and the guidelines for risk analysis in border policing still need to be adopted. Operational coordination between border police, customs and phytosanitary services remain to be improved. Further modernisation and upgrading of equipment and infrastructure is needed, both at border crossing points and for surveillance purposes, including access to relevant Interpol databases. The border police needs to further improve its risk analysis capacities. Overall, Serbia continues to be moderately advanced on border management.

Some progress was achieved regarding **judicial cooperation in civil and criminal matters**. Further efforts were made to streamline practical cooperation, especially at regional level. Agreements were signed in November 2011 with Slovenia on mutual legal assistance in the enforcement of court judgments and with the former Yugoslav Republic of Macedonia on extradition of own citizens. Cooperation continued with Croatia in matters of extradition, enforcement of criminal judgments and war crimes processing. However, further improvements are still needed to ensure practical enforcement of the legal framework. Action is also needed to ensure effective cooperation with Eurojust. Overall, Serbia remains moderately advanced in the areas of judicial cooperation in civil and criminal matters.

Serbia has made progress in the area of **police cooperation and the fight against organised crime**. The law on Police was amended in December 2011 to better define police cooperation at operative level through joint actions, teams and exchange of liaison officers. Measures have been taken to improve the methodology and standards of police work, including an information booklet on anti-corruption for police officers. Cooperation between relevant agencies has improved within the country, in the region and internationally, leading to good results in a number of high-profile investigations into organised crime groups. An agreement on police cooperation was signed with the former Yugoslav Republic of Macedonia in November 2011. A secure link at the Ministry of the Interior has been established for improving cooperation with Albania, Bosnia and Herzegovina, Croatia, Montenegro and the former Yugoslav Republic of Macedonia. The Ministry of the Interior signed an amendment to the bilateral technical agreement with Europol in March 2012 and an expert mission from Europol took place in December 2011. However, organised crime still remains a serious concern in Serbia. Final convictions remain rare. Capacity to carry out complex, in particular financial, investigations needs to be built up. Specialised services, in particular the unit for witness protection, still lack sufficient staff, resources and adequate premises. Cooperation and information flow between law enforcement agencies needs to be improved. Statistical data needs to be harmonised and a centralised criminal intelligence system still remains to be established. Risk assessments and crime mapping need to be used more broadly and intelligence-led policing is to be developed. The capacity of the police to carry out, independently of the security intelligence agencies, certain special investigative measures in criminal investigations needs to be established in line with EU standards. Overall, Serbia is moderately advanced as regards police cooperation and the fight against organised crime.

Regarding seizure of assets, out of 134 requests to confiscate assets, 63 were approved in full, 14 partially and 36 denied in 2011. There was a significant increase in the staff of the Directorate for assets seizure. However, further sustained efforts are needed to enhance the effectiveness of legislation in this area. Coordination between the prosecutors and institutions involved in asset recovery needs to be further improved. The Directorate and the Financial Investigation

Unit (FIU) lack sufficient means and technical expertise. Specialised training on financial instruments needs to be provided to judges and prosecutors in order to be able to process adequately data provided by the FIU and open financial investigations when justified.

Some progress was achieved in the fight against money laundering. (*See also Chapter 4 — Free movement of capital*) The number of identified cases of tax fraud and of final convictions for money laundering offences has increased. However, the staff and analytical capacity of the Administration for the Prevention of Money Laundering need to be further built up. The number of suspicious transactions identified remains low and reporting, especially from outside the banking sector, needs to develop. Law enforcement and judicial authorities still lack expertise to handle money laundering cases. Overall, Serbia is moderately advanced in the fight against money laundering.

Serbia remained a country of origin, transit and destination for trafficking in human beings. Some steps were taken to implement the action plan of the national strategy to combat human trafficking. A temporarily seized house was in October 2011 turned into a safe house for victims of trafficking. However, the strategy and associated action plan remain to be updated. A uniform database for criminal reports and proceedings and a specific monitoring mechanism in this area have not been established. The effective compensation and social inclusion of victims, through a special fund, in line with existing EU standards remains to be ensured. Overall, Serbia is moderately advanced in fighting trafficking in human beings.

Serbia has made little progress regarding the **fight against terrorism**. Within the Security Information Agency, a unit was created for combating international organised crime, including money laundering and terrorist financing. However, a national database and more efficient information exchange procedures need to be established and inter-agency cooperation improved. Overall, Serbia is moderately advanced in fighting terrorism.

Some progress was achieved concerning **cooperation in the field of drugs**. An interministerial commission for controlled psychoactive substances was established in November 2011. Actions were taken in education and anti-drugs campaigning. A national report on the drug situation and an action plan for a drug information system were developed in cooperation with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). The national focal point for EMCDDA, aimed at further improving cooperation and coordination at national level and strengthening data collection, is now operative since February 2012. Good results were achieved in international and regional cooperation and several joint actions led to a number of arrests and drugs seizures at border crossing points with Croatia, Bulgaria and Hungary. Operational information exchanged with Interpol led to successful actions in countering increased activities of some criminal groups. However, Serbia remains on the main drug trafficking routes. The national focal point for European Monitoring Center for Drugs and Drug Addiction, aimed at further improving cooperation and coordination at national

level and strengthening data collection, is now operative. Destruction of seized drugs still remains to be ensured. Overall, Serbia is moderately advanced regarding the cooperation in the field of drugs.

Concerning **customs cooperation** (*see also Chapter 29 – Customs Union*), some progress was achieved. The Customs Administration of Serbia (CAS) concluded agreements on international cooperation with Azerbaijan, Belarus and Georgia. Implementation of the integrated border management strategy and action plan has continued. The CAS engaged in joint cases with all agencies from neighbouring countries and continues to take an active part in international activities concerning the fight against illegal trade in goods such as narcotics, oil and cigarettes and cross-border movement control. However, Serbia still needs to align its legal framework with EU legislation on the use of technology for customs purposes and to ratify and implement the ‘Naples II’ Convention on mutual assistance and cooperation between customs administrations. Overall, Serbia is moderately advanced regarding the cooperation in the field of customs.

For **protection of the euro against counterfeiting**, *see Chapter 32 – Financial control*.

Conclusion

Serbia made some progress in the area of justice, freedom and security. Serbia is actively involved in international police and judicial cooperation and law enforcement agencies generally have sufficient capacity to carry out standard investigations. Additional efforts are needed to increase capacities to carry out complex investigations and to strengthen coordination between law enforcement agencies and the judiciary. A track record of proactive investigations and final convictions in organised crime cases needs to be built up. Overall, preparations in the area of justice, freedom and security are moderately advanced.

4.25. Chapter 25: Science and research

Some progress has been made regarding **research and innovation policy**. Serbia has taken actions to stimulate innovation and strengthen its research infrastructures. However, public investment in research remains at 0.5% of GDP, below the national target, and the number of researchers has not increased.

Regarding **framework programmes**, Serbia’s participation in the 7th EU Research Framework Programme (FP7) remains good, although further efforts are necessary in order to involve more small and medium-sized enterprises, obtain Marie Curie actions and participate successfully in the specific programme ideas governed by the European Research Council. Serbia has continued to promote research cooperation with EU and other international partners and is well integrated in a number of key research themes. Serbia participates actively in COST and EUREKA actions. The implementation of the Memorandum of Understanding on scientific and technological cooperation between Serbia and the Joint Research Centre (JRC) is well on track.

Serbia became an associate member of the European Organisation for Nuclear Research (CERN) in February 2012.

Regarding the **European Research Area**, Serbia has started to apply the European Charter and Code of Conduct on the recruitment of researchers. The national Euraxess portal is functioning well. Since May 2012, Serbia is a founding member of a European research infrastructure consortium in the area of nanotechnology and material science – C-ERIC. With respect to the Innovation Union, an Innovation Fund was established delivering grants in support of innovation to companies in the IT, biotechnology, nanotechnology and agro-food sector. Construction of research infrastructure and purchase of scientific equipment has progressed well, but a Research Infrastructure roadmap, in accordance with the European Strategic Forum for Research Infrastructures is still missing. The implementation and monitoring of the action plans and national targets in particular on investment and on mobility of researchers remains generally weak and needs to be improved.

Conclusion

Some progress was registered in the area of science and research. Both public and private investment in research remains low and Serbia generally needs to reinforce its national research capacity and monitoring as well as implement the actions envisaged. Overall, preparations in the area of science and research are on track.

4.26. Chapter 26: Education and culture

Limited progress has been made in the field of **education and training**. Serbia's higher education institutions continue to operate according to Bologna standards. Serbia is one of the leading partner countries in the Tempus programme. It has made some progress as regards the social inclusion of children from marginalised groups, including through the introduction of pedagogical assistants and greater enrolment of Roma children. As regards quality assurance in elementary schools, a new version of the final exam has been introduced and reforms are ongoing.

However, implementation of educational reforms remains slow and the human and financial resources of the Ministry weak. Capacities for sound financial management and control still need to be strengthened in view of Serbia's participation in EU programmes. There has been limited progress regarding the introduction of a National Qualifications Framework in higher education. The Serbian vocational education and training (VET) system needs further reforms and modernisation, including the introduction of new curricula, with a view to responding better to labour market needs.

In the field of **youth** policy, progress has been made in implementing the youth law and strategy. Out of 131 established youth offices across Serbian municipalities, 115 have adopted local action plans. Serbia remains an active participant in the Youth

in Action programme with 40 accredited organisations. The Ministry of Youth and Sports has been active in supporting youth volunteering initiatives and providing career guidance to young people across Serbia.

Little progress can be reported in the field of **culture**. Serbia is actively participating in the EU Culture programme. The highest number of applications for the literary translation component of this programme came from Serbia.

Conclusion

Little progress can be reported in the area of education and culture. There was progress in making the education system more socially inclusive, and in introducing quality assurance standards in elementary education. Better implementation of higher education reforms remains a challenge and reforms in the VET sector still need to be speeded up. Financial management and financial control still need strengthening in view of Serbia's participation in the future Education, Youth and Sport programme. Overall, in the area of education and culture, alignment with EU standards is moderately advanced.

4.27. Chapter 27: Environment and climate change

As regards the **environment**, some progress was made with regard to *horizontal legislation*. Serbia adopted its National Environmental Approximation Strategy in October 2011. A Strategy for the Implementation of the Aarhus Convention was adopted in December 2011. A law ratifying Serbia's accession to the Pollutant Release and Transfer Register (PRTR) of the UN Economic Commission for Europe was adopted in October 2011. The National Strategy for Sustainable Use of Natural Resources and Goods was adopted in May 2012. The Serbian Environmental Protection Agency (SEPA) has been designated to host and manage Serbia's E-PRTR database. To date around 60% of the estimated 600 operators that fall under reporting obligations are using the system. Although the alignment with the Environmental Impact Assessment Directive is fully achieved, the implementation needs to be improved, in particular the public consultation process and the quality of the dialogue with the NGOs. Some progress can be reported with regard to *air quality*. The Law ratifying the Protocol on heavy metals and the Law ratifying the Protocol on persistent Organic Pollutants have been adopted in January and March 2012 respectively. Air quality monitoring was further enhanced with the commissioning of a national calibration laboratory for air monitors and an analytical laboratory for air pollutants at SEPA. However, SEPA's capacity and budget for air quality-related work alone is largely insufficient.

Progress can be reported in the area of *waste management*. The Law on Mining and Geological Research regulating the management of mining waste was adopted in November 2011. Implementing legislation on environmentally sound disposal of waste containing persistent organic pollutants was adopted in September 2011. With the adoption of implementing legislation on procedures for the management of TiO₂-containing waste, alignment with the *acquis* on hazardous waste legislation has been

largely completed. However, Serbia still needs to fully align with the Waste Framework Directive. Preparation of national plans for specific hazardous waste streams, e.g. asbestos, batteries, accumulators, electrical and electronic equipment, waste oil is progressing well. Concessions for two EU-compliant regional landfills have been granted to private operators. The collection rate of household waste has increased from 60% to 72%. Pilot projects for primary waste segregation have been launched in selected communities. A system of data collection, registration and reporting on waste is operational as part of the national register of pollution sources. However, disparities between urban and rural areas remain. The participation of waste generators in providing relevant data needs to be improved. So far, four landfills were built under a concession agreement.

Some progress can be reported in the area of *water quality*. Serbia has aligned its legislation with EU *acquis* on emission limit values (ELVs) for water pollutants and deadlines for complying with them, as well as on parameters of ecological and chemical status of surface and of chemical and quantitative status of ground waters. The process of characterising the Serbian part of the Danube River Basin Management Plan has been completed in line with the Water Framework Directive. Progress has been made in the construction of wastewater treatment plants: one waste water treatment plant in Subotica has been completed while the construction of plants in Vrbas, Kula, Leskovac and Sabac is ongoing. Funds and own resources are allocated with priority to waste water collection and treatment. However, the service levels continue to be very low. The capacity of the Ministry of Agriculture's Water Directorate needs to be substantially enhanced.

The Law on Public Utility Services is largely in line with the tariff principles of the Water Framework Directive. However, cost-covering tariffs for water remain to be introduced in the Water Law. The development of the groundwater monitoring network needs to advance.

Little progress can be reported in the area of *nature protection*. Three protected areas (Gutavica, Paljevine, Bukovicka Banja Park) were established in December 2011. Organisation of the work of Natura 2000 stakeholders has been clarified and pilot management plans for selected protected areas have been prepared. The first import and export certificates under the Convention on International Trade in Endangered Species (CITES) were issued and licensing of zoos commenced in line with the provisions of the EU Zoos Directive. However, the administrative capacity in relation to protected areas is insufficient. The involvement of NGOs in the national nature protection effort is lagging behind.

Little progress was made in implementing the legislation on *industrial pollution and risk management*. The integrated approach to permitting must be institutionalised and the administrative capacity strengthened. Thirty four safety reports and emergency plans have been received from operators of upper tier installations belonging to Seveso establishments. The risk management group is sufficiently staffed. However, its administrative capacity remains to be improved.

Good progress can be reported in the area of *chemicals*. The Law amending the Law on Chemicals and the Law amending the Law on Biocidal Products were

adopted in December 2011. A joint body comprising three inspectorates, namely the Environment Inspectorate, the Trade Inspectorate and the Sanitary Inspectorate was established. The downstream legislation (annexes) with regard to the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), the Classification, Labelling and Packaging of Chemical Products (CLP) and the Biocidal Products Directive (BPD) has been updated to follow the changes in the EU legislation. The helpdesk of the Serbian Chemicals Agency (SHemA) acquired in December 2011 observer status with the European Chemicals Agency. Law enforcement has improved with the implementation of annual plans for the inspection and supervision of industry/manufacturing as regards the classification and labelling of chemicals and biocides. An inspection campaign was performed during the summer. The administrative capacity of SHemA was increased to 42 staff members. However, in September, the Agency was abolished and its activities were transferred to the Ministry of Energy, Development and Environmental Protection. It should be ensured that the agency's transferred competences and administrative capacity are preserved.

There is no progress to report in the area of *noise* pending the designation of competent authorities, the identification of areas for strategic noise mapping and the drawing-up of corresponding action plans.

Regarding *civil protection*, in October 2011 a bilateral agreement on emergency assistance was concluded with Slovakia, and letters of intent were signed with France. In March 2012 a memorandum of understanding on emergency management was signed with Italy. A bilateral Serbia-Russia humanitarian centre was opened in Nis in April 2012. Cooperation with the EU Civil Protection Mechanism in order to develop a regional approach with a strong EU dimension to disaster prevention, preparedness and response remains to be ensured.

The administrative capacity in the environment sector needs to be strengthened.

In the area of **climate change**, no progress was made on general policy development; a comprehensive climate strategy is still to be developed. Climate considerations are being increasingly integrated in the energy policy, but substantial efforts are required in order to fully integrate climate change into sectoral policies and strategies.

Serbia regularly associated itself with EU positions in the international context. While having previously associated itself also with the Copenhagen Accord and having submitted an assessment of its mitigation potential to the UNFCCC, the country did nevertheless not yet put forward a mitigation commitment by 2020. Serbia should consider taking mitigation commitments consistent with those of the EU and its Member States for the purpose of the post-2020 climate agreement to be reached by 2015. Limited progress was achieved in alignment with climate *acquis*. Serbia took initial steps to identify stationary installations for the purpose of future implementation of an emissions trading system (ETS). All Serbian aircraft operators who participate in the EU ETS have developed and submitted their monitoring plans and CO₂ emission reports for

2010 and 2011. The legislation on geological storage of carbon dioxide, and ozone-depleting substances was partially aligned. In January 2012 the first centre for recovery and recycling of hydrochloric fluorocarbons (HCFCs) was established. Serbia started reflection on a future ETS. Significant efforts are required to strengthen the country's monitoring, reporting, and verification capacities because the respective EU legislation sets the foundation for progress with the entire EU climate *acquis*.

Serbia participated regularly in the climate work under the Regional Environmental Network for Accession (RENA). A successful high level event was organised in February 2012 under RENA on EU-Serbia Climate Cooperation. There continues to be a significant need for awareness-raising at all levels. Initiatives to raise awareness and promote co-operation between stakeholders should be further intensified.

Steps are taken to recruit further staff in the Ministry of energy, environmental development and protection. However, the shortage of administrative capacity and ad hoc inter-institutional cooperation are delaying the preparation and implementation of a climate policy in line with the *acquis*. The administrative structure on climate change should be considerably strengthened, and capacity building support is required in order to address the significant capacity, cooperation and coordination needs in the area.

Conclusions

Some progress has been achieved in the area of the environment. Alignment with the environmental *acquis* and the ratification of international environmental conventions continued. Significant further efforts are needed in order to implement the national legislation, especially in the areas of water management, industrial pollution control and risk management, nature protection and air quality. The strengthening of the administrative capacity should remain a priority. Little progress was achieved in alignment with the climate *acquis*. Considerable efforts are required on awareness-raising on opportunities and challenges of climate action, setting a more strategic approach for the country, aligning with and implementing EU climate *acquis*, as well as strengthening administrative capacity and inter-institutional cooperation. Overall, Serbia has started to address its priorities in the field of the environment and climate change.

4.28. Chapter 28: Consumer and health protection

There has been some progress in the area of **consumer protection**. As regards *horizontal aspects*, cooperation with consumer protection organisations has improved, as have awareness-raising and education campaigns for consumers. However, the administrative capacity of the Department for Consumer Protection within the Ministry of Agriculture, Trade, Forestry and Water Management, and coordination with line ministries and regulatory bodies remain weak. The National Council for Consumer Protection has not been yet established.

There has been no progress as regards *product safety-related issues*. Tools and procedures for the mediation process remain to be strengthened in order to ensure proper and effective enforcement of consumer protection rules and market surveillance. There was no further legal alignment.

There has been some progress with regard to *non-safety related issues*. Legislation on consumer credit has been further aligned with the *acquis*. However, further alignment of the law on protection of users of financial services is required.

There has been no progress in the area of **public health**. Overall financial sustainability of the public health system in Serbia is seriously endangered by the poor financial situation of the public health fund.

There has been no progress in the area of *tobacco control*. Complete alignment with EU tobacco legislation has yet to be achieved.

Little progress has been made in the area of *communicable diseases*. Some case definitions for reporting communicable diseases, including clinical, laboratory and epidemiological criteria, are still missing and EU case definitions have to be progressively adopted. The surveillance and response capacity remains limited and requires modernisation, in particular in the form of human resources and material. More attention is needed for effective implementation of the national HIV/AIDS strategy and awareness raising.

There has been no progress in the area of *blood, tissues, cells and organs*. Further efforts are needed to implement the Law on Organ Transplantation. The administrative and technical capacity of the Directorate for Biomedicine in the Ministry of Health needs to be strengthened.

There has been no progress to report in the field of *mental health*. Administrative capacity is still very weak and inadequate to ensure implementation of the Strategy for the development of mental healthcare. Community-based mental health services should be further supported as an alternative to institutional care, across the life-span. Further action needs to be taken to promote inclusion of people with mental health problems and ensure equal enjoyment of basic human rights and equal access to employment, education and social services.

Regarding *cancer screening*, implementation of the national screening programmes for cervical, breast and colorectal cancers is ongoing. Additional efforts are needed to implement the EU guidelines in this field. There has been some progress in the area of *drug abuse prevention* as regards measures to curb the supply of illicit drugs and also in the provision of needle exchange and substitution treatment in the framework of HIV prevention. There was no development in the area of *alcohol* consumption.

Conclusion

There has been some progress in the area of consumer and health protection. Efforts need to focus on implementing the existing legislative framework and

further aligning with the *acquis*. Institutional coordination between the relevant actors and administrative capacity in both the areas of consumer protection and public health need to be strengthened. Overall, preparations in the area of consumer and health protection are moderately on track.

4.29. Chapter 29: Customs union

There has been good progress on **customs legislation**. The Serbian government amended the decree on customs tariff nomenclature in November 2011 with the aim of aligning it with the 2012 EU Combined Nomenclature and with the liberalisation schedule of the Interim Agreement. Serbia increased duty relief for postal packages in October 2011. However, the rules are still not fully in line with the *acquis*. The Law on the Customs Service remains to be established and the classification practice is to be upgraded to EU standards.

Legislation has been adopted on customs-related security initiatives, including authorised economic operators. This legislation remains to be implemented. A regulation on the application of measures for the protection of intellectual property rights was adopted. However, the Customs Administration of Serbia (CAS) still needs to utilise fully the electronic exchange of data with IPR holders. An adequate legislative framework on cultural goods is to be established. The provisions on cash control remain to be aligned with the *acquis*. Preparations in the area of customs legislation are on track.

There has been some progress concerning **administrative and operational capacity**. The CAS has continued to improve its administrative capacity to effectively enforce the customs legislation. It applied integrity procedures for customs officials and stepped up the fight against corruption. Post-clearance controls and risk analysis systems were further strengthened by adopting a strategy for post-clearance audit, systematisation of procedures and setting up of an electronic database of customs offenders. Auditing has been reinforced and the central customs administration has been authorised to carry out audits of individual customs offices. In December 2011, the State Audit Institution reported on faultless 2010 financial records for the CAS in December 2011. The coordination between CAS and the Ministry of Finance and Economy has also improved and new instructions have been issued on cooperation between the two entities. The CAS is establishing a fully functioning IT system based on interconnectivity between its various departments. Around 90% of customs declarations are submitted electronically and the concept of electronic signature introduced. However, the Customs Declaration Processing System (CDPS) should be renewed or upgraded and a properly equipped and functioning customs laboratory is needed.

In terms of trade facilitation, the CAS implements the system for exchanging pre-arrival information with Bosnia and Herzegovina, Montenegro and the former Yugoslav Republic of Macedonia. It continues to actively engage in international activities concerning the fight against illegal trade in goods (narcotics, oil and cigarettes) and cross-border movement control.

Customs procedures between Kosovo and Serbia have stabilised further since the adoption of two Belgrade-Pristina dialogue agreements on customs stamps and integrated border management (IBM). However, the situation at gates 1 and 31 remains complicated in terms of procedures to be applied. The Serbian side eventually signed the Implementation Protocol on IBM in September 2012, but it has yet to be implemented. In the meantime, the Administrative Border/Boundary Line (ABL) between Kosovo and Serbia remains vulnerable to illicit activities. Trade in goods between Serbia and Kosovo remains handled by the Serbian Tax Administration and its Special Department and not by the Serbian customs. This includes most excise goods. Customs procedures to guarantee the application of the *acquis* at the ABL with Kosovo have yet to be introduced.

Preparations in the area of administrative and operational capacity are on track.

Conclusion

Serbia made good progress in the area of the Customs Union with the adoption of new laws and sustained efforts to enhance its administrative capacity, in particular in the audit and post-clearance sector. Coordination between the customs administration and the Ministry of the Economy and Finance in charge of customs policy needs to be further improved. Serbia also needs to ensure the proper application of the *acquis* at the ABL with Kosovo. Customs related security legislation should be implemented and the CDPS system renewed or upgraded. Overall, preparations in the area of the Customs Union are well on track.

4.30. Chapter 30: External relations

Some progress was made in the area of the **common commercial policy**. Serbia is in the final stage of the procedure for joining the World Trade Organisation (WTO). However, the finalisation of its WTO membership remains dependent on the pace at which bilateral negotiations are completed, in particular with Ukraine. Serbia also needs to adopt a WTO-compliant law on genetically modified organisms.

The Law on Foreign Trade Transactions was amended in November 2011 in order to harmonise it with the Law on Customs, company law and the Law on Foreign Exchange Transactions. Regarding organisational changes, the group for the foreign trade system and safeguard measures within the Ministry of Foreign and Domestic Trade and Telecommunications has experienced considerable downsizing. No decision introducing final safeguard measures against importers has been taken. No progress was registered in terms of administrative capacity for improved coordination between various ministries.

Concerning the export credits scheme, the Serbian Export Credit and Financing Agency continues to cover both short-term and medium-/long-term export credit insurance.

In relation to dual-use export controls, Serbia continues to participate in relevant international fora and to comply with the European Union list of dual-use goods and technologies. The national control list for dual-use goods and military equipment was adopted and aligned with relevant *acquis*. However, administrative capacities in this area remain insufficient, requiring more staff and training.

In the area of bilateral agreements with third countries, Serbia is currently negotiating a free trade agreement (FTA) with Ukraine. The renegotiation of its trade arrangements with the Russian Federation and Belarus are ongoing, since the two countries now form a customs union with Kazakhstan. Serbia has ratified three more bilateral investment treaties (BITs) with Azerbaijan, Kazakhstan and Indonesia and has signed one with Algeria.

Conclusion

Some progress has been made in the field of external relations. Accession to the WTO is pending the completion of bilateral negotiations. Overall, preparations in the area of external relations are moderately advanced.

4.31. Chapter 31: Foreign, security and defence policy

Political dialogue through regular political consultations between the EU and Serbia continued and covered foreign policy issues. (*Concerning relations with other enlargement countries and Member States, see Political criteria 2.3 — Regional issues and international obligations*)

As regards the **common foreign and security policy (CFSP)**, Serbia has significantly improved its record of alignment. When invited to, Serbia aligned itself with 69 out of 70 relevant EU declarations and Council decisions (99% alignment). (*As regards the International Criminal Court, see Political criteria 2.3 — Regional issues and international obligations*)

Serbia continued to implement the UN Security Council's *restrictive measures*. However, the Law on Restrictive Measures remains to be adopted together with a system for tracking Serbia's implementation of EU restrictive measures.

Regarding *conflict prevention* no particular developments can be reported.

Regarding *non-proliferation*, a first EU-Serbia political dialogue at working level on conventional arms issues took place in April 2012. Serbia applied for membership of the Nuclear Suppliers Group in 2012. Serbia's 2008 application to join the Wassenaar Arrangement on export controls for conventional arms and dual-use goods and technologies is being processed. The National Coordinator for the implementation of the small arms and light weapons strategy was appointed in December 2011. An Action Plan for the implementation of this strategy remains to be adopted. Serbia has yet to fully align with the *acquis* laying down common rules governing exports of military technology and equipment.

Serbia continued to engage actively in *cooperation with international organisations* (UN, OSCE, Council of Europe, etc.). It was designated in February 2012 for the chairmanship of the OSCE for 2015 and in June 2012 for the presidency of the 67th UN General Assembly.

As regards *security measures*, in February 2012 Serbia ratified the May 2011 agreement with the EU on security procedures for exchanging and protecting classified information.

Concerning the **common security and defence policy (CSDP)**, in February 2012 Serbia ratified the June 2011 agreement establishing a framework for Serbia's participation in *civil and military crisis management* operations. Serbia participates in the EU Navfor-Atalanta Somalia operation and EUTM Somalia operation with one member each. Serbia attended the EU Battlegroups conference in April 2012. Following the granting of candidate status, Serbia started to participate in meetings of the EU Military Committee in March 2012.

Conclusion

Serbia significantly improved its alignment with EU declarations and Council decisions in the field of CFSP and showed continued commitment to participate in EU civil and military crisis management operations. Overall, preparations in the area of foreign, security and defence policy are well on track.

4.32. Chapter 32: Financial control

There was limited progress in the area of **public internal financial control** (PIFC). Implementing legislation on internal audit (IA) and financial management and control (FMC) was further aligned with international standards in December 2011. It now better defines managerial accountability and separation of the roles of a manager and an accountant. The Central Harmonisation Unit (CHU) continued to focus on technical activities, especially training and certification of internal auditors.

However, the PIFC Policy Paper needs updating, because the action plan is largely outdated. Also the Budget System Law needs to be amended, especially regarding provisions on FMC and inspection. Managerial accountability and FMC are still understood in a narrow sense. FMC focuses on the legality and regularity of financial transactions, without explicit consideration of economy, efficiency and effectiveness. More awareness-raising with senior public sector managers is needed to increase their understanding of their specific role and responsibilities in setting up internal control systems and of the role of an internal auditor within their organisation. Preparations in this area are at an early stage.

There was progress in the area of **external audit**. The State Audit Institution (SAI) continued to gradually build up its capacities, and further auditors were recruited. The SAI has now approximately 130 staff, including over 100 auditors. A strategic development plan for 2011-15 was adopted by the SAI Council in November 2011. The SAI continued to work on improving audit methodology. It also further increased audit coverage. However, the SAI Law does not provide for

full financial and operational independence in line with the standards of the International Organisation of Supreme Audit Institutions (INTOSAI). The SAI is still in the institution-building phase, as it has only operated for four years. It is under-resourced, and the audit coverage is still rather limited. Performance audit work has not yet started. In addition, according to the requirements of the SAI Law, the SAI continues to have a specific responsibility to submit requests for filing misdemeanour and/or criminal charges to the competent authority. This responsibility, which rather should be part of wider budget inspection activities, takes up some of the SAI's limited resources that could be instead used for additional audit work. Preparations in this area are at an early stage.

There was no progress in the area of **protection of the EU's financial interests**. Serbia has not yet designated an authority as a contact point for cooperation with the European Commission. Preparations in this area are at an early stage.

There was limited progress in the area of **protection of the euro against counterfeiting**. Serbian authorities continued to participate in relevant EU and international training programmes. The National Bank is still in the process of reorganising the procedures for technical analysis and processing of information on counterfeit bank notes and coins in order to act as a national analysis centre. Preparations in this area are not very advanced.

Conclusion

Some progress was made in the area of financial control, particularly as regards external audit. Substantial efforts are needed to develop public sector financial management and control based on the underlying concept of managerial accountability. Overall, preparations in this chapter are still at an early stage.

4.33. Chapter 33: Financial and budgetary provisions

No progress can be reported in the field of **traditional own resources**, the **VAT resource** and the **GNI resource**. (*For progress in the underlying areas, see Chapters 16 — Taxation, 18 — Statistics, 29 — Customs union and 32 — Financial control*)

With regard to **administrative infrastructure**, the administrative capacity of the institutions in the underlying policy areas needs to be further strengthened. Also, a fully operational coordination structure is required in order to ensure the correct calculation, accounting, forecasting, collection, payment and control of own resources and reporting to the EU for implementation of the own resources rules. Effective tools to fight tax evasion and fraud and reduce the informal economy need to be further developed.

Conclusion

There has been no progress regarding financial and budgetary provisions. The necessary administrative infrastructure, including coordination and

organisational and procedural links between various institutions involved in the own resources system, needs to be developed in due time. Overall, preparations in this area are at an early stage.

Statistical Annex

STATISTICAL DATA

Serbia

Basic data	Note	2001	2007	2008	2009	2010	2011
Population (thousand)		7 505	7 398	7 366	7 335	7 307	7 276
Total area of the country (km ²)		77 474	77 474	77 474	77 474	77 474	77 474
National accounts	Note	2001	2007	2008	2009	2010	2011
Gross domestic product (GDP) (million national currency)		762,178	2,276,886	2,661,387	2,720,084	2,881,891	3,175,025e
GDP (million euro)		12 819	28 474	32 679	28 952	27 968	31 143e
GDP (euro per capita)		1 708	3 849	4 437	3 947	3 828	4 280e
GDP (in Purchasing Power Standards (PPS) per capita)		:	8 188	8 940	8 340	8 406	:
GDP per capita in PPS (EU-27 = 100)		:	33	36	36	35	:
Real GDP growth rate (growth rate of GDP volume, national currency, % change on previous year)		5.3	5.4	3.8	-3.5	1.0	1.6e
Employment growth (national accounts, % change on previous year)		2.0	2.3	1.0	:	:	:
Labour productivity growth: GDP growth per person employed (% change on previous year)		3.5	4.5	4.5	:	:	:
Real unit labour cost growth (national accounts, % change on previous year)		:	:	:	:	:	:
Labour productivity per person employed (GDP in PPS per person employed, EU-27 = 100)		:	:	:	:	:	:
Gross value added by main sectors (%)							
Agriculture and fisheries		19.5	10.1	10.4	9.4	9.9	10.4e
Industry		24.6	22.5	21.9	22.3	22.5	23.0e
Construction		3.3	5.1	5.5	4.8	4.6	4.7e
Services		52.6	62.3	62.2	63.5	63.0	61.9e
Final consumption expenditure, as a share of GDP (%)		104.0	96.9	97.1	99.6	99.8	:
Gross fixed capital formation, as a share of GDP (%)		10.7	24.3	23.8	18.8	17.8	:
Changes in inventories, as a share of GDP (%)		1.0	4.7	6.0	-0.7	-0.5	:
Exports of goods and services, relative to GDP (%)		25.6	30.6	31.4	29.4	36.0	:

Imports of goods and services, relative to GDP (%)		41.3	56.5	58.2	47.1	53.0	:
Industry	Note	2001	2007	2008	2009	2010	2011
Industrial production volume index (2005=100)		94.3	108.5	110.0	96.1	98.5	100.6
Inflation rate	Note	2001	2007	2008	2009	2010	2011
Annual average inflation rate (CPI, % change on previous year)		93.3	6.5	11.7	8.4	6.5	11.0
Balance of payments	Note	2001	2007	2008	2009	2010	2011
Balance of payments: current account total (million euro)		282	-5 053	-7 054	-2 084	-2 082	-2 968
Balance of payments current account: trade balance (million euro)		-2 602	-7 069	-8 501	-5 118	-4 774	-5 514
Balance of payments current account: net services (million euro)		272	-261	-185	18	5	161
Balance of payments current account: net income (million euro)		7	-599	-922	-502	-670	-758
Balance of payments current account: net current transfers (million euro)		2 605	2 876	2 554	3 518	3 356	3 143
of which government transfers (million euro)		652	166	163	197	193	206
Net foreign direct investment (FDI) (million euro)		184	1 821	1 824	1 372	860	1 827
Foreign direct investment (FDI) abroad (million euro)		-14	-692	-193	-38	-143	-122
of which FDI of the reporting economy in EU-27 countries (million euro)		:	-53	-78	-28	-33	-84
Foreign direct investment (FDI) in the reporting economy (million euro)		198	2 513	2 018	1 410	1 003	1 949
of which FDI of EU-27 countries in the reporting economy (million euro)		:	1 813	1 470	808	778	1 690

Public finance	Note	2001	2007	2008	2009	2010	2011
General government deficit/surplus, relative to GDP (%)		:	-2.0	-2.6	-4.5	-4.7	-5.0e
General government debt relative to GDP (%)		104.8	31.2	26.9	34.0	43.5	46.5e
Financial indicators	Note	2001	2007	2008	2009	2010	2011
Gross foreign debt of the whole economy, relative to GDP (%)		85.6	60.2	64.5	77.7	85.0	77.5e
Gross foreign debt of the whole economy, relative to total exports (%)		407.3	197.3	207.6	265.3	236.2	210.3
Money supply: M1 (banknotes, coins, overnight deposits, million euro)	1)	975	3 141	2 717	2 695	2 401	2 807
Money supply: M2 (M1 plus deposits with maturity up to two years, million euro)	2)	1 141	4 928	4 459	4 555	3 891	4 663
Money supply: M3 (M2 plus marketable instruments, million euro)	3)	2 101	11 407	11 198	12 573	12 899	14 339

Total credit by monetary financial institutions to residents (consolidated) (million euro)		4 866	10 771	12 926	14 863	17 544	18 995
Interest rates: day-to-day money rate, per annum (%)		:	8.3	18.4	9.5	12.0	8.5
Lending interest rate (one year), per annum (%)		16.9	12.5	20.3	12.0	14.0	12.3
Deposit interest rate (one year), per annum (%)		:	7.5	15.3	7.0	9.0	7.3
euro exchange rates: average of period - 1 euro = ... national currency	4)	59.458	79.964	81.441	93.952	103.043	101.950
Effective exchange rate index (2005=100)	5)	125.6	106.2	105.8	122.1	115.3	127.1
Value of reserve assets (including gold) (million euro)		:	9 634	8 162	10 602	10 002	12 058

External trade	Note	2001	2007	2008	2009	2010	2011
Value of imports: all goods, all partners (million euro)		:	13 501.0	14 316.0	10 386.0	12 475.0	13 925.0
Value of exports: all goods, all partners (million euro)		:	6 615.0	5 157.0	4 094.0	7 067.0	8 058.0
Trade balance: all goods, all partners (million euro)		:	-6 886.0	-9 159.0	-6 293.0	-5 408.0	-5 868.0
Terms of trade (export price index / import price index)	6)	103.1	102.6	97.6	100.9	99.6	99.2
Share of exports to EU-27 countries in value of total exports (%)		:	58.1	48.5	46.7	58.7	59.0
Share of imports from EU-27 countries in value of total imports (%)		:	55.1	51.4	52.9	54.8	53.7
Demography	Note	2001	2007	2008	2009	2010	2011
Natural growth rate: natural change (births minus deaths) (per 1000 inhabitants)		-2.7	-4.7	-4.6	-4.6	-4.8	-5.1
Infant mortality rate: deaths of children under one year of age per 1000 live births		10.2	7.1	6.7	7.0	6.7	6.3
Life expectancy at birth: male (years)		69.6	70.9	71.3	71.4	71.4	71.6
Life expectancy at birth: female (years)		75.0	76.5	76.6	76.7	76.6	76.8
Labour market	Note	2001	2007	2008	2009	2010	2011
Economic activity rate (20-64): share of population aged 20-64 that is economically active (%)		:	67.3	67.0	64.7	63.7	64.1
* Employment rate (20-64): share of population aged 20-64 in employment (%)		:	55.2	57.8	54.1	51.2	49.2
Employment rate male (20-64) (%)		:	65.1	67.5	63.0	59.2	56.8
Employment rate female (20-64) (%)		:	46.5	48.9	46.4	43.5	41.7
Employment rate of older workers (55-64): share of population aged 55-64 in employment (%)		42.1	33.5	37.6	35.4	32.8	31.4

Employment by main sectors (%)							
Agriculture	7)	:	20.8e	25.1e	23.9be	22.3e	21.2e
Industry	7)	:	23.4e	19.9e	20.1be	21.0e	21.5e
Construction	7)	:	6.1e	6.3e	5.2be	5.0e	5.3e
Services	7)	:	49.7e	48.6e	50.8be	51.7e	52.0e
Unemployment rate: share of labour force that is unemployed (%)		13.3	18.3	13.6	16.3	19.2	23.0
Share of male labour force that is unemployed (%)		11.5	16.0	11.9	14.8	18.4	22.4
Share of female labour force that is unemployed (%)		15.7	21.2	15.8	17.8	20.2	23.7
Unemployment rate of persons < 25 years: share of labour force aged <25 that is unemployed (%)		46.4	43.7	35.2	41.6	46.2	50.9
Long-term unemployment rate: share of labour force that is unemployed for 12 months and more (%)		9.0	14.8	9.7	10.5	13.3	16.9
Social cohesion	Note	2001	2007	2008	2009	2010	2011
Average nominal monthly wages and salaries (national currency)	8)	8 691.0	38 744.0	45 674.0	44 147.0b	47 450.0	52 733.0
Index of real wages and salaries (index of nominal wages and salaries divided by the CPI/HICP) (2000=100)	8)	118.4	266.1	275.7	275.6b	277.4	277.9
* Early school leavers - Share of population aged 18-24 with at most lower secondary education and not in further education or training (%)		:	12.6	11.6	9.3	8.2	8.5
Standard of living	Note	2001	2007	2008	2009	2010	2011
Number of passenger cars per 1000 population	9)	184.2	199.7	201.8	223.2	214.3	230.5
Number of subscriptions to cellular mobile telephone services per 1000 population		251.1	1 142.6	1 194.2	1 351.3	1 357.0	1 399.4
Infrastructure	Note	2001	2007	2008	2009	2010	2011
Density of railway network (lines in operation, per 1000 km ²)		49.2	49.2	49.2	49.3	49.3	49.3
Length of motorways (km)		370	370	465	495	495	595
Innovation and research	Note	2001	2007	2008	2009	2010	2011
Spending on human resources (public expenditure on education in % of GDP)		2.4	3.5	3.6	3.8	3.7	:
* Gross domestic expenditure on R&D in % of GDP		:	:	0.4	0.9	0.8	:
Percentage of households who have Internet access at home (%)		:	26.0	33.2	37.0	39.0	41.2
Environment	Note	2001	2007	2008	2009	2010	2011
* Greenhouse gas emissions, CO2 equivalent (tons, 1990=100)		:	:	:	:	:	:
Energy intensity of the economy (kg of oil equivalent per 1000 euro GDP)		:	660.7	:	:	:	:

Electricity generated from renewable sources in % of gross electricity consumption		43.3	37.9	35.1	39.3	37.4	:
Road share of inland freight transport (% of tonne-km)		13.8	15.9	16.3	23.6	27.8	30.5
Energy							
Energy	Note	2001	2007	2008	2009	2010	2011
Primary production of all energy products (thousand TOE)		:	8 797	9 441	9 487	9 876	:
Primary production of crude oil (thousand TOE)		:	654	652	676	929	:
Primary production of hard coal and lignite (thousand TOE)		:	7 073	7 369	7 330	7 226	:
Primary production of natural gas (thousand TOE)		:	198	231	232	342	:
Net imports of all energy products (thousand TOE)		:	7 260	7 477	5 046	6 320	:
Gross inland energy consumption (thousand TOE)		:	14 996	15 620	14 657	15 093	:
Electricity generation (thousand GWh)		31.0	37.0	37.0	38.0	38.0	:
Agriculture							
Agriculture	Note	2001	2007	2008	2009	2010	2011
Agricultural production volume index of goods and services (producer prices, previous year=100)		118.0	92.0e	108.0	101.0	99.4	100.9
Total utilised agricultural area (thousand hectare)		5 077	5 053	5 055	5 057	5 052	5 056
Livestock: cattle (thousand heads, end of period)	10)	1 128	1 087	1 057	1 002	938	937
Livestock: pigs (thousand heads, end of period)	10)	3 587	3 832	3 594	3 631	3 489	3 287
Livestock: sheep and goats (thousand heads, end of period)	10)	1 612	1 756	1 760	1 647	1 604	1 590
Production and utilisation of milk on the farm (total whole milk, thousand tonnes)	11)	1 594	1 562	1 548	1 488	1 471	1 445
Crop production: cereals (including rice) (thousand tonnes, harvested production)	12)	9 001	6 212	8 833	9 111	9 280	9 066
Crop production: sugar beet (thousand tonnes, harvested production)		1 806	3 206	2 300	2 798	3 325	2 822
Crop production: vegetables (thousand tonnes, harvested production)		1 283	1 128	1 277	1 257	1 314	1 305

: = not available

- = not applicable

p = provisional

e = estimated value

b = break in series

* = Europe 2020 indicator

The balance of payments sign conventions are used for FDI. For FDI abroad a minus sign means investment abroad by the reporting economy exceeded

its disinvestment in the period, while an entry without sign means disinvestment exceeded investment. For FDI in the reporting economy an entry without sign means that investment into the reporting economy exceeded disinvestment, while a minus sign indicates that disinvestment exceeded investment.

Footnotes:

- 1) The money supply M1 consists of currency in circulation and funds in giro, current and other accounts belonging to the owners of money balances in banks' liabilities, including money balances in the accounts of local government bodies, i.e. Accounts from which payments can be made with any restrictions.
- 2) The money to M1, supply M2, in addition includes other dinar deposits, both short-and long-term.
- 3) The money supply M3, in addition to M2, includes short-and long term foreign currency deposits (without the so called frozen foreign currency savings).
- 4) The annual average exchange rate is calculated as an arithmetic mean of official middle exchange rates of the national currency (dinar) against a unit of foreign currency applied on working days.
- 5) Index of nominal effective exchange rate adjusted for the ratio of domestic consumer price index to the weighted sum of indices of consumer prices in the euro area and US.
- 6) From 2004 onwards the data are not comparable with the previous years as since January 2004 Uniform Customs Document harmonized with EU regulations has been used.
- 7) 2004–2009, data were provided according to NACE Rev. 1.1.
- 8) From January 2009, the Statistical Office of the Republic of Serbia is expanding the coverage of units. Besides the salaries and wages paid to legal entities' employees, from January 2009, salaries and wages paid to employees working in unincorporated enterprises have been also included in calculation of average salaries and wages.
- 9) Ministry of Interior Affaires excluded the vehicles that were not registered before the given deadline (1 month).
- 10) Since 2006, the reference date is 1 December (instead 15 January as it was before).
- 11) In million litres, includes cows and sheep milk.
- 12) No rice production; since 2005, triticale is included.

INSTRUCTIONS FOR ASSOCIATES

The Review of International Affairs is a quarterly published in January, April, July and October every year.

The periodical publishes evaluated articles and conference and book reviews in the field of international relations, foreign policy, international public law and international economics.

In writing all contributions for *The Review of International Affairs* authors are kindly asked to respect the following rules.

Instructions for Writing Articles

1. Author contributions (articles) should not be longer than 10 single-spaced pages (single) in *Word* format (up to 28000 characters with spaces).
2. Articles should be written in *Times New Roman* font, font size 12, with page numbers on the right side of the bottom of the page.
3. The title of the article should be written in capital letters, *in Bold*, font size 14. The title is separated from the text with – *spacing before 18 pt*. Below the title is given the author's forename, middle name and surname (including his title, possibly), the name of the institutions he works for as well as its seat. These data are given in *Italic*.

Example:

Prof. Dragana Marko Mitrović, Ph.D., Faculty of Political Science, Belgrade

4. If the author has a wish to point to his readers that some of the views presented in the article express his own opinion and not the one of the institution he works for it is necessary to insert at the end of the title a special footnote with the symbol * for this remark.
5. The *Abstract* should contain not more than 100 words, presenting the most significant hypotheses the work is based upon. Below the *Abstract* the author puts up to 12 *Key Words*. Both the *Abstract* and *Key Words* are given below the title of the article and they should be separated from the rest of the text by applying the option *Paragraph-Indentation*.
6. The *Summary* written in the language of the paper (e.g. Serbian) should be placed after the text. The author should give a concise contents of the paper and the most significant hypothesis his work is based upon.
7. The basic text and footnotes should be justified by applying the option *justify*, while titles should be centred by applying the option *center*.
8. Subtitles are written in *Bold*, while sub-subtitles are in *Italic*; in both cases the font size is 12.

9. The first line in every paragraph should by no means be indented by applying tabulator – option *tab*.
10. Latin, Old Greek and other non-English words and terms in the text should be written in *Italic* (e.g. *status quo*, *a priori*, *de facto*, *acquis communautaire*, etc.). The text should contain full names and not initials.
11. Only the following form of quotation marks should be put in the text – “ and ”. In case the additional quotation marks are to be put within these ones it should be done in the following way: “Establishing a Serbian Orthodox Monastic Community in Kosovo, as an integral part of comprehensive ‘final status’ settlement”.
12. Footnotes should be written on the bottom of the page (option *Footnote*), and their marks are solely to be put at the end of the sentence.

The details on the quoted bibliographic unit in footnotes should be given in conformity with the following suggestions:

a) *Monographs*

The author's full forename and surname, the title of the monograph (*in Italic*), publisher, place of publishing, year of publishing, p. if one page of the quotation in English is cited, pp. if several pages are quoted. In case several pages are quoted En Dash is applied with no space before and after the numbers (for example 22–50).

When the proceedings in English are quoted and they were edited by more than one editor, then there should be put (eds) in brackets with no full stop after the names of the editors. If there is only one editor then (ed.) is put, including a full stop inside the brackets.

Examples:

John Gillingham, *European Integration 1950–2003*, Cambridge University Press, Cambridge, 2003, p. 221.

Duško Lopandić (ed.), *Regional initiatives in Southeast Europe: multilateral cooperation programs in the Balkans*, Institute of International Politics and Economics, Belgrade, 2001, pp. 24–32.

Theodor Winkler, Brana Marković, Predrag Simić & Ognjen Pribičević (eds), *European Integration and the Balkans*, Center for South Eastern European Studies, Belgrade & Geneva Centre for the Democratic Control of the Armed Forces, Geneva, 2002, pp. 234–7.

b) *Articles in Scientific Journals*

The author's full forename and surname, the title of the paper (with quotation marks), the title of the journal (*in Italic*), the number of the volume, the number of the publication, pp. from–to. The numbers of pages are separated by En Dash (–), with no space. If some data are incomplete it should be clearly stated.

Examples:

Michael Levi, “The Organisation of Serious Crimes”, in: Mike Maguire, Rod Morgan & Robert Reiner (eds), *The Oxford Handbook of Criminology*, Oxford University Press, Oxford, 2003, pp. 878–84. (pp. 878–9 or p. 878).

Robert J. Bunker & John. R. Sullivan, “Cartel Evolution: Potentials and Consequences”, *Transnational Organized Crime*, vol. 4, no. 2, Summer 1998, pp. 55–76.

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There should be given the author's name (or his initials, if they are the only ones given), the title of the article – with quotation marks, the title of the newspapers or the journal (*in Italic*), date – in Arabic numerals, the number of the page/pages.

Example:

John Gapper, "Investor votes should count", *The Financial Times*, 17 April 2006, p. 9.

d) *Document quotation*

There should be given the title of the document (with quotation marks), the article, item or paragraph the author refers to, the title of the journal or official gazette containing the document (*in Italic*), the number of the volume, the number of the publication, the place of publishing and year of publishing.

Example:

"Resolution 1244 (1999)", Security Council of the United Nations, 10 June 1999.

e) *Quotation of sources from the Internet*

It should contain the author's name, the title of the contribution or article, a full Internet Website that enables to access the source of quotation by typing the mentioned site, the date of accession to the Web page, page number (if there is one and if presented in PDF format).

Example:

Maureen Lewis, *Who is Paying for Health Care in Eastern Europe and Central Asia?*, IBRD & World Bank, Washington D.C, 2000, Internet, [http://Inweb18.worldbank.org/eca/eca.nsf/Attachments/Who+is+Paying+for+Health+Care+in+Eastern+Europe+and+Central+Asia/\\$File/Who+is+Paying+text.pdf](http://Inweb18.worldbank.org/eca/eca.nsf/Attachments/Who+is+Paying+for+Health+Care+in+Eastern+Europe+and+Central+Asia/$File/Who+is+Paying+text.pdf), 14/09/2004, p. 3.

f) *Repeating of the previously quoted sources*

Ibid. or ibidem is applied only if quoting the previous source in the text, with the page number, and in case the new quotation belongs to the same source (e.g. *ibid.*, p. 11)

Loc. cit. or op. cit. is applied with no page number and only for the previously mentioned source of quotation with the same page number as the previously quoted source.

13. The article may contain tables or some other supplements (such as maps, graphs, and the like). It is necessary to give their number and full title (e.g. *Table 1: Human Development Index among EU members* or *Figure 2: State-Building or Sovereignty Strategy*). If the supplement is taken over from the contribution of some other author or a document its source should necessarily be given.

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2. The bibliographic details should be given at the beginning of the review in accordance with the rules prescribed for monographs in footnotes, and with the total number of pages given at the end (e.g. p. 345).

3. Book and conference reviews must not contain footnotes, while all possible remarks should be put in brackets.
4. The author may also write subtitles of the book or conference review in capital letters – font size 14, although this is subject to changes on the part of the editorial staff.
5. Font size, font and justification of the text should be in conformity with the previously mentioned suggestions on writing of articles.
6. The name of the author of the review is given at the end; it should be in *Italic*, while the whole surname should be written in capital letters (e.g. *Žaklina NOVIČIĆ*).

* * * * *

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